

CONTEXTUALISING LEGAL EDUCATION: THE CASE OF SOLOMON ISLANDS AND VANUATU

Carolyn Rachel Penfold

December 2017

A thesis submitted for the degree of Doctor of Philosophy
of The Australian National University

© Copyright by Carolyn Rachel Penfold 2017

All Rights Reserved

Except where acknowledged in the text, this work represents
the author's own original research.

Signed

ACKNOWLEDGEMENTS

Sincere and heartfelt thanks to everyone who helped me complete this project. More people have helped than I can mention individually, but you all have my gratitude.

Thanks to the legal and broader communities of Solomon Islands and Vanuatu who allowed me to experience a tiny slice of your lives. I truly appreciate your kindness and your warm welcome. Thanks especially to all participants in this research project who so generously gave me your time and trust, and without whose contributions this project would have been impossible. Thanks also to USP's broader student body who made my work in the South Pacific so enjoyable, and who taught me so much.

On the academic side, thanks go especially to my supervisor Professor Kathy Bowrey, who stepped into this role when my initial supervisor became unwell. Kathy's breadth of knowledge, expertise in supervision, and constant willingness to discuss, read, re-read, comment, help, advise, mentor, cajole and encourage have been instrumental in the completion of this thesis. Thanks also to Associate Professor Miranda Forsyth, whose expertise in the South Pacific, and timely and insightful comments, advice and encouragement helped enormously, although she too was brought into the project late. Miranda and Kathy, I hope that in future you will be with me from the very first step. I would also like to thank Professor Michael Coper, my initial supervisor, for his interest, enthusiasm, and willingness to take on the project. Thanks also to Associate Professor Mark Nolan for his contribution to my supervisory panel.

I would like to thank all staff of USP Law School, past and present, and others who have been involved in South Pacific legal education. Personal interactions and friendships with many of you, plus the written contributions of those who I have not

had the opportunity to meet or work with, have helped greatly to inform this research. In addition to the discussions, advice, assistance and support many of you have given me, the bibliography to this work is evidence of my indebtedness to you.

I would like to thank my many colleagues at UNSW for your support. In particular, thanks are due to those in the Legal Education Research Cluster. Your sustained interest in and enthusiasm for legal education offered me an ongoing 'community' in this area, and helped me to clarify ideas and push through problems.

Thanks also to Sonia Nitchell and Fiona Penfold who read and commented on the work, for their ongoing interest, constant encouragement and helpful suggestions. Thanks to Christina Mitini for taking care of me in Solomon Islands, and to Grace Dawson for her support and assistance.

Professional editor, Donna Armstrong, provided copyediting and proofreading services, according to the guidelines laid out in the university-endorsed national *Guidelines for editing research theses*. Donna deserves chocolate, wine, flowers and all the good things life can bring. Thank you Donna for making the final stage of this project so much easier than it would otherwise have been.

Finally, thanks to my husband Michael, and sons Eddy, D'Arcy and Chester. Some of you have been a great deal more helpful than others, but all of you have contributed in one way or another. Thanks for your love and support. You're top blokes.

This research was supported by an Australian Government Research Training Program (RTP) Scholarship.

ABSTRACT

Legal educators in the South Pacific, often from outside the region and on short-term appointments, may initially have limited familiarity with some or all South Pacific environments, beyond an understanding that their legal systems are 'based on common law'. The University of the South Pacific, a regional institution providing legal education for 12 independent South Pacific countries, aims to produce graduates 'well equipped to enter the legal professions' of these countries. However, there have been few resources to inform legal educators about the local legal environments in which their graduates will work, and to help educators understand what law graduates require to be 'well equipped' for South Pacific jurisdictions. To help bridge the information gap, the research undertaken for this thesis investigates the legal environments and preparatory needs of law graduates in two of these South Pacific jurisdictions: Solomon Islands and Vanuatu.

The thesis begins with an overview of the development of state law, the legal profession and legal education in the South Pacific, to provide historical context for the work that follows. A case study of contemporary legal environments is then presented. Set within an interpretive paradigm, this qualitative study draws from 80 interviews conducted within the legal sectors of Solomon Islands and Vanuatu, and from documentary and other sources. The picture which emerges is of an environment in which state law sits uneasily with continuing local traditions and everyday life, and where lawyers and the legal profession as a whole face many challenges in their attempts to meet the legal needs of their communities.

The case study demonstrates that to be well equipped to enter the legal professions of Solomon Islands and Vanuatu, law graduates need high degrees of 'work-readiness', and legal knowledge, skills and attitudes tailored to these legal environments. Drawing on educational theory and practice, and taking account of the constraints facing legal educators in the South Pacific, the thesis then explores how undergraduate law students might be helped to achieve the preparation required for working in local legal environments.

CONTENTS

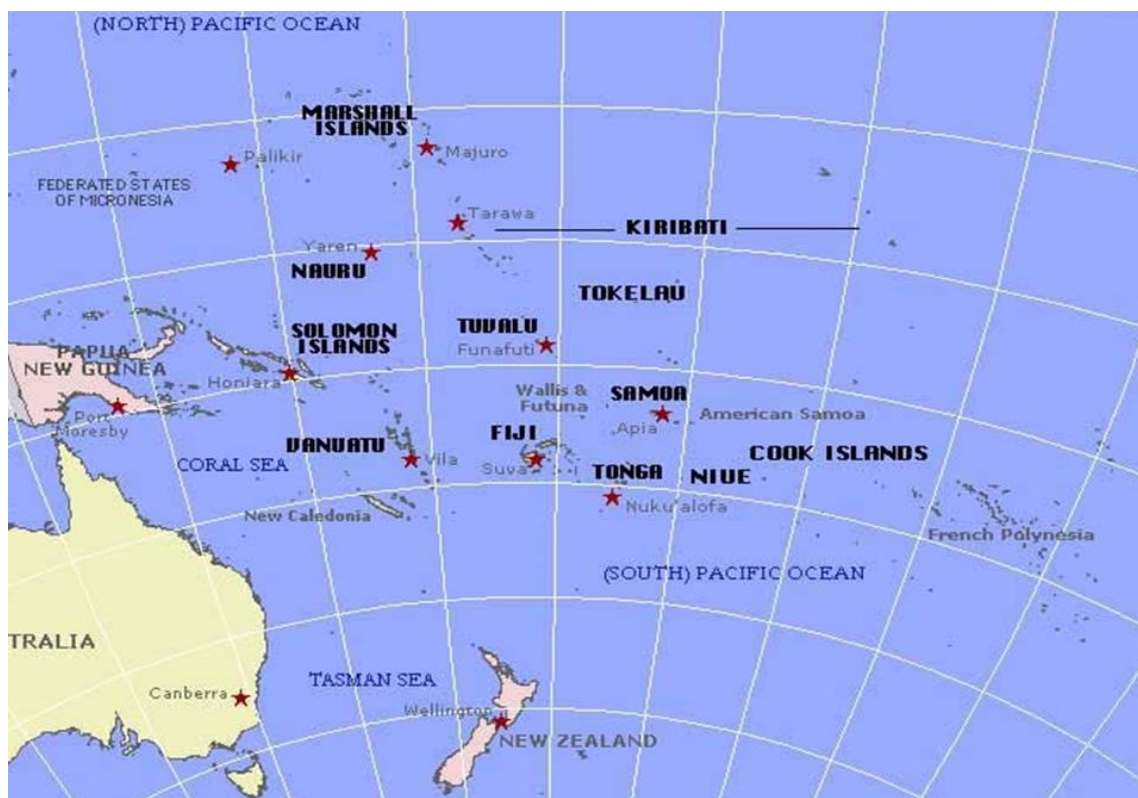
Acknowledgements.....	ii
Abstract.....	iv
Abbreviations	vii
South Pacific Regional Map.....	viii
A Note on Terminology	ix
Chapter One: Contextualising Legal Education — The Case of Solomon Islands and Vanuatu	1
1. Introduction.....	1
2. The Research Problem and Literature Review	12
3. The Research Question.....	22
4. Structure of the Thesis	24
5. Limitations and Delimitations	27
Chapter Two: Method and Methodology	31
1. Introduction.....	31
2. Research Paradigm	33
3. Methodology	34
4. Research Methods.....	46
5. Conclusion	65
Chapter Three: The Development of South Pacific Law	67
1. Introduction.....	67
2. The Pre-Colonial Period	68
3. The Colonial Period.....	76
4. Arrangements Following Independence	79
5. Contrasting Australia, New Zealand and the South Pacific.....	85
6. Conclusion	89
Chapter Four: Development of the Local Legal Profession	91
1. Introduction.....	91
2. The Legal Profession in ‘the Colonies’	91
3. The Legal Profession in the South Pacific.....	95
4. The Role of Lawyers and Legal Education	101
5. The Development of Law Programs at USP.....	106

6. Conclusion	113
Chapter Five: Legal Education in the South Pacific.....	114
1. Introduction.....	114
2. The Law Curriculum in Formerly Colonised/Newly Independent States	114
3. USP’s Law Curriculum.....	117
4. Recent Developments: Graduate Attributes and Program Learning Outcomes ..	124
5. Conclusion	132
Chapter Six: Lawyers’ Work, Perceived Needs, and the Legal Settings of Solomon Islands and Vanuatu	134
1. Introduction.....	134
2. Part A: Lawyers’ Work, and Learning to be a Lawyer.....	137
3. Part B: Knowledge, Communication Skills and Professionalism	164
4. Part C: The Local Legal Environment — Rounding out the Picture.....	221
5. Part D: Pulling the Picture Together.....	272
6. Conclusion	280
Chapter Seven: Implications and Suggestions	283
1. Introduction.....	283
2. The Purposes of Local Legal Education	286
3. The Need for Work-Readiness.....	294
4. Outcomes-Focused Education.....	296
5. Program Learning Outcomes.....	302
6. Drawing on Study Findings and Applying Learning Theory in Practice	307
7. Moving Forward	332
8. Conclusion	358
Chapter Eight: Conclusion and Reflections	360
1. Overview of the research project.....	360
2. Final thoughts.....	362
Appendix One: Interview Questions	368
Appendix Two: USP LLB Program Outcomes	377
Bibliography	379

ABBREVIATIONS

AusAID	Australian Agency for International Development
CLC	Community Legal Centre
CLE	continuing legal education
DPP	Director of Public Prosecutions
IT	Information technology
LLB	Bachelor of Laws
NGO	non-government organisation
NSW	New South Wales
PacLII	Pacific Islands Legal Information Institute
PDLP	Professional Diploma in Legal Practice
PILON	Pacific Islands Law Officers' Network
PLOs	program learning outcomes
PLT	practical legal training
PSO	Public Solicitor's Office
RAMSI	Regional Assistance Mission to Solomon Islands
SIBA	Solomon Islands Bar Association
SPLA	South Pacific Lawyers' Association
STAR	Strategic Total Academic Review
TEQSA	Tertiary Education Quality and Standards Agency
TLOs	threshold learning outcomes
UN	United Nations
UPNG	University of Papua New Guinea
USP	University of the South Pacific
VLS	Vanuatu Law Society
VLSSP	Vanuatu Legal Sector Strengthening Project

SOUTH PACIFIC REGIONAL MAP



Member countries of the University of the South Pacific: Cook Islands, Fiji Islands, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu.¹

¹ University of the South Pacific, 'ICT Capacity Building at USP' (Project Documents, University of the South Pacific, 22 April 2005) Annex 1 <<https://www.usp.ac.fj/jica/resources/PROJECTDOCS.HTM>>.

A NOTE ON TERMINOLOGY

Certain words or terms which are used in this thesis have been adapted to the local context. For example, in this thesis an 'Adviser' is not simply a person who gives advice. This, and other terms used in a specific way in this thesis, are explained below. The only local terms I use are *kastom* and *wantok*, as these terms were commonly used by research participants. Otherwise the terms I use have their common English language meanings.

Adviser: is used in this thesis to refer to personnel in capacity building roles in legal and other sectors throughout the South Pacific who are funded by foreign aid. Advisers often have a local **Counterpart** who they guide, assist and mentor to further develop the counterpart's professional knowledge and competence.

Colonial / Colonisation / Coloniser: is used in a general, not legal, sense. For example, during the 'colonial period' Solomon Islands was in fact a British Protectorate rather than a colony, and Vanuatu was governed jointly by Britain and France under a Condominium agreement. Nonetheless these arrangements are referred to as colonial.

Common Law Legal Education: is used to refer to legal education following an English common law model, such as that used in Australia, New Zealand, much of Africa, and the South Pacific, rather than America's postgraduate model of legal education.

Custom Law, Customary Law: is used only when referred to as such in another source, otherwise the term *kastom* is used. Custom is used in its usual English language sense.

Indigenous / indigenous: Indigenous is used throughout this thesis to afford respect to Indigenous matters, peoples and individuals; indigenous is used only when quoted directly from another source.

Independence: is used to refer to the formal withdrawal of dominion by a colonial power, the time of that occurrence, and/or the period since then.

Independence Constitution: is used to refer to the supreme law of the state since independence, whether enacted by a colonising power, the local legislature, or both.

Kastom: may refer to general habits, patterns and ways of life within the Pacific Islands, past or current, including methods of leadership, social control and dispute resolution. **Kastom** is also often used to refer to the part of traditional or local custom which ‘looks like law’ to a common lawyer, although, generally in traditional Melanesian societies, ‘law’ (or *kastom*) has been an integral part of, and not differentiated from, the totality of the way of life.¹

Lawyer: is used to refer to a person with a law degree.

Local and Foreign/er: are used to differentiate between people or things originally from the South Pacific Islands and those originating elsewhere, particularly in terms of research participants.

The South Pacific, Pacific Islands: is used to refer to the many states which are members of the University of the South Pacific: Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

¹ Bernard Narokobi, *Lo Bilong Yumi Yet: Law and Custom in Melanesia* (Melanesian Institute for Pastoral and Socio-Economic Service and the University of the South Pacific, 1989) 25.

These terms as used in this thesis exclude the Pacific islands of Australia and New Zealand, and generally also exclude Hawaii and Papua New Guinea.

State Law, State Legal System: is used to refer to law and legal systems originating in a colonising (or other arrangement of dominion) state, and imposed upon, received into or adopted by Pacific Islands; laws made during the colonial period, either by the coloniser or by a local legislature under the authority of the colonial power; and laws made since independence by the state legislature or by decision of state courts.

Wantok/Wantokism: Literally, *wantoks* are those who speak the same language ('one talk'). *Wantokism* describes the relationships of mutual obligation and support between *wantoks*, but may extend beyond those sharing language to those sharing other social and geographical associations, such as the same village, area, or province).²

Western / European / Foreign / Introduced: refers to people, perspectives, world views and other matters not originating in the Pacific Islands, often to differentiate from **Traditional, Local, Indigenous** or **Pacific**.

² Matthew Allen, Sinclair Dinnen, Daniel Evans and Rebecca Monson, *Justice Delivered Locally: Systems, Challenges and Innovations in Solomon Islands. July 2013 Research Report* (Justice for the Poor, 2013) IX <<https://dfat.gov.au/about-us/publications/Documents/justice-delivered-locally-systems-challenges-innovations-in-solomon-islands.pdf>>.

CHAPTER ONE: CONTEXTUALISING LEGAL EDUCATION — THE CASE OF SOLOMON ISLANDS AND VANUATU

1. Introduction

In 2010 I took up a post at the University of the South Pacific (USP) School of Law after almost 20 years academic experience in a large Australian law school. It had been suggested at my recruitment interview for USP that I would have little trouble teaching law in the South Pacific, given the length and breadth of my legal education experience and the fact that local systems were ‘based on common law’. In reality, I found myself totally unprepared for the task. At that stage USP was the only university in the area to produce Bachelor of Laws (LLB) graduates. It is a regional university spanning 12 countries (Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu) with 12 introduced or borrowed legal systems as well as numerous Indigenous, or *kastom*, legal systems. Law was taught face to face on two campuses hundreds of miles apart, and by distance education throughout the region. I found that the School of Law had very few academic staff, high staff turnover, scarcely any senior staff, and a mix of often less experienced local teachers and more experienced foreign teachers.

The School of Law at USP was established in the likeness of law schools in Britain, Australia and New Zealand, with a similar curriculum, using a similar course and program structure, and covering similar core content but with a South Pacific flavour. In addition to offering the undergraduate LLB, a four-year degree introduced in 1994, USP also offered a half-year Professional Diploma in Legal Practice (PDLP), introduced in 1998 to prepare LLB graduates to practise law in the South Pacific region. The PDLP program was similar in content to legal professional practice programs offered in

Australia. This practical training was then generally followed by a period of supervised practice preceding either admission as a lawyer or the right to unrestricted practice, requirements and procedures for which vary across the region.

USP's School of Law had been staffed predominantly by teachers from Australia, New Zealand, Britain, North America, Europe and Papua New Guinea, with a smattering of local staff, most commonly from Fiji and Solomon Islands. All Heads of USP's School of Law had been drawn from outside the Pacific Islands, and most often from Australia. The PDLP was staffed predominantly by people from Fiji.

While both the LLB and PDLP programs were similar in structure and content to those offered in a number of other countries with long-established, stable and highly formal legal systems, questions arose about how, or how well, these programs translated to the South Pacific legal environment. To answer such questions it was first necessary to understand better what that legal environment comprised, and it is this that the research project set out to investigate.

I was alerted to the need for this research by the frequent criticisms I heard regarding local lawyers, my experiences as a classroom teacher, and my experiences of law school administration. Each is discussed below.

a) Criticism of Local Lawyers

While teaching in Vanuatu and on occasional regional visits to Solomon Islands I heard frequent criticism of local law graduates. According to AusAID, '[t]he poor quality of recent law graduates from USP has been identified by many as a critical issue'.¹

¹ AusAID, *Stretem Rod Blong Jastis: Vanuatu Law and Justice Partnership Design Document* (Department of Foreign Affairs and Trade, September 2011) 11 <<https://dfat.gov.au/about-us/publications/Documents/stretem-rod-blong-jastis-design-document.pdf>>.

Vanuatu's Chief Justice has expressed concern about the standards of local lawyers,² and other South Pacific lawyers such as Sir Frank Kabui, Governor General of Solomon Islands and past Chancellor of USP, have been scathing in their criticisms of the local legal profession.³ A Vanuatu Minister asked in parliamentary debate, 'why do we only have a second-rate law school?'⁴ USP's own Vice-Chancellor told School of Law staff that concerns regarding the poor language skills of USP's law graduates had been the subject of discussion at an Australian High Commission meeting.⁵ More recently, a panel reviewing the USP School of Law noted that 'a good deal of dissatisfaction was expressed [by stakeholders] with the readiness of recent LLB graduates from USP to

Note this response: 'As the sources of these criticisms are not known, and the nature of the criticism has not been particularised, the comments are, to say the least, unhelpful and difficult to respond to.' R B Cartledge, 'Thrown in at the Deep End' (2011) Issue 3 (October–December) South Pacific Lawyers Association *newSPLash* 6

<https://docs.wixstatic.com/ugd/0217f9_8b9ed8f97907487ab0535c89320a7286.pdf>.

² Chief Justice Vincent Lunabeck, 6 December 2010, comments reported to author by USP Community Legal Centre solicitor and manager Robert Cartledge. See also Bob Makin, *Vanuatu Daily News Digest* (13 March 2013) Vanuatu Daily Digest <<https://vanuatudaily.wordpress.com>>

As the biggest and most complex land ownership issue before the Supreme Court reached its final management stages, the Chief Justice was clearly unimpressed with the performance of legal representatives ... Eight lawyers had been engaged by the participants. However, only three were present. A further one arrived late ...

³ Sir Frank Kabui, Governor General of Solomon Islands and Vice-Chancellor of USP, Speech delivered to School of Law Staff, Port Vila, December 2011 (attended by author). See also 'Chief Justice Shares Concerns', *Solomon Times Online*, 22 January 2013 <<http://www.solomontimes.com/news/chief-justice-shares-concerns/7485>>.

Sir Albert says the quality of legal submission and advocacy in the courts clearly reflect the lack of proper training and mentoring. He says the lack of relevant knowledge, skills and experience while going into private practice will affect the quality of legal services provided, court performances and the image of the legal profession in the Solomon Islands.

See also Aina Tolo, 'Letter to Editor', *Solomon Star* (online), 15 April 2015

<<http://www.solomonstarnews.com/viewpoint/letters-to-the-editor/6565-lawyers-where-is-the-legal-ethics>>:

Reading through some of the courts' judgements available on PacLII, I am baffled that some judgements are littered with criticisms about lawyers' unprofessional conducts. I can imagine how much of such is submerged in the cases not published online or with judges who do hold back reducing criticisms in their written judgements.

⁴ Minister Maxime Carlot Korman. Vanuatu Hansards are notoriously incomplete and unreliable. This was reported to the author by a lawyer who attended the parliamentary debate regarding the passage of the *Law Society Act 2010* (Vanuatu).

⁵ Rajesh Chandra, Vice Chancellor of USP, open meeting with staff, Emalus Campus, July 2010 (attended by author).

take their place in the legal profession ... It was clear to the Panel that some of this dissatisfaction was the result of a mismatch of expectations ...'.⁶

Criticism of the Law School and local lawyers obviously causes disquiet for legal academics, law graduates and others in the region. Given that the system of legal education in the South Pacific is outwardly very similar to many such systems overseas, I was interested to know why criticisms of the legal profession in Solomon Islands and Vanuatu seemed to be the norm rather than the exception. It would have been easy to revert to long-standing colonial assumptions that local people did not work hard enough, did not have the required intellectual capacity, did not recognise the values of the common law, or that their societies were not sufficiently developed to support the introduced legal systems.⁷ It would have been easy to blame the deficiencies of students, graduates and the local environment.

However, to go beyond those easy answers, I wanted to examine more deeply what was happening. Why were students completing four years of law studies, half a year of practical training, and then being criticised in practice? What was happening between our teaching law and their practising law? Did the assumptions of the University, the Law School, individual teachers, and the curriculum more broadly take sufficient account of South Pacific environments? What did law graduates need in order to prepare them for the local environment? If local lawyers were being criticised, was there space for improvement in the legal education provided? The importance of such questions was underlined for me by my experiences while teaching at USP, both in the classroom and in the Law School more broadly.

⁶ The University of the South Pacific, 'Review Panel Report for the School of Law, Faculty of Arts, Law and Education' (August 2012) 63 (held by author).

⁷ As discussed in Chapter Two Method and Methodology.

b) Experiences in the Classroom

To orient myself to local teaching I began with documentation regarding the Law School and USP generally. USP's School of Law stated that it aimed to produce 'graduates who are appropriately prepared for a wide range of employment and service opportunities within the region'.⁸ USP's Strategic Plan included within its first priority area the following objective: 'Ensure programmes continue to be relevant and responsive to the needs of the region.'⁹ However, there were few resources available to assist teachers, often inexperienced and/or foreign, to ensure that their academic practice coincided with these intentions or fulfilled these aims.

Some legal academics at USP were very knowledgeable about aspects of the South Pacific legal environment. Yet for many staff, both foreign and local, often on short-term contracts and with heavy teaching loads, developing the required expertise was not easy. It was particularly difficult to appreciate the legal environment into which USP's law graduates would be thrust as there was little literature available on the topic. I was concerned about how I, and other teachers, could contribute to the Law School's aim of appropriately preparing graduates for opportunities within the region, if we did not know what those opportunities were, and thus what appropriate preparation might involve.

Law teachers drawn from within the South Pacific region may be familiar with some, but not all, local environments. From discussions with others, it became clear that many foreign teachers, especially early in their contracts, were not familiar with *any*

⁸ University of the South Pacific School of Law, *About the School of Law* (16 July 2003) <http://www.vanuatu.usp.ac.fj/about/about_main.html>.

⁹ The University of the South Pacific, *Strategic Plan 2013–2018* (2013), 25 <<http://www.usp.ac.fj/strategicplan2013-2018>>.

South Pacific environments, and found a gulf between their own experiences, understandings and expectations, and those of their students. The following examples from my own experience illustrate this point.

a) In a course entitled *Courts and Dispute Resolution* the following fact situation was posed to students: A number of local boys had stolen a pig. The boys were identified, and punishment and fines ordered by the local chief were carried out. Afterwards, however, charges of theft were laid under state law, and the matter was heard by a Magistrate. The Magistrate was a family member of the pig's owner, closed the court without reason, refused to hear the boys' evidence, ignored defences allowed by legislation, and acted beyond jurisdiction in sentencing the boys to a lengthy prison term. There were at least a dozen points, all of which had been covered in the course, on which the Magistrate's decision could have been challenged.

Students were asked to identify any grounds for challenging the decision. A number of students gave virtually the same response, although in different words: 'The boys stole the pig, they deserved the punishment. They should accept the punishment, and they should not steal in future.' A small number of these students did not identify *any* legal grounds for challenge.

b) In a *Property Law* course a succession matter was being discussed. The testator was the mother of two sons and one daughter. The testator's Will identified certain property which was to be shared amongst her family members upon her death. Some students saw the outcome as sharing the property three ways, but other students saw the property as being divided between the two sons only. When queried about this the

students explained: 'The daughter is married, therefore she is not part of her mother's family. She is now part of her husband's family.'

c) In a course entitled *Legal Ethics* I showed the students a newspaper report about seven people who appeared in one court on one day in three unrelated criminal matters. None of the matters could be heard because lawyers (for one side or the other) failed to appear. All seven accused were returned to custody. This reported incident was used to illustrate the importance of professional behaviour, including time management, reliability, preparation, etc., and to highlight the potentially dire consequences of unprofessional behaviour.

One student approached me after class: 'I know it is very important to behave professionally. But what if we get to the court and there are small white parcels placed around the court, and they contain magic? What should we do then? I know you don't believe these things, but we do.'

Experiences such as these, each of which involved students from different South Pacific jurisdictions, highlighted for me a significant potential mismatch between the law commonly taught in the classroom, the real-world experience of Pacific Island students, and the environment in which local lawyers would work after graduation. They demonstrated for me that students were likely to have very different experiences, world views, expectations and understandings to those of their teachers, particularly foreign teachers. On analysis, it seemed to me to be likely that studying (state) law would require local students to move (both literally and figuratively) a very great distance from their everyday lives. They would need to understand and internalise concepts and perspectives which may appear to them incomprehensible,

possibly nonsensical, and certainly far outside their lived experiences. Further, students may have little help traversing that ground if teachers were not sufficiently oriented to the local environment to help them do so. After four and a half years of university preparation, graduates would take their new knowledge of state legal systems, laws and institutions back to their own jurisdictions, and attempt to apply that knowledge to communities with experiences, world views, expectations and understandings very different from those assumed by common law and state legal systems.

It was clear as a result that legal educators needed to pay great attention to local context if they were to help students to learn state law, and to prepare graduates for work in these local legal environments.

c) Experience in Academic Administration

An experience with academic administration reinforced this view. In 2011 the Strategic Total Academic Review (STAR) was introduced to USP, which included a requirement that learning outcomes be articulated for all programs. It is necessary first to outline some of the activity preceding the STAR program, both at USP and overseas.

In the prior 15 to 20 years many higher education institutions had moved away from a focus on purely academic teaching, and increasingly emphasised the development of broader graduate attributes, including knowledge, skills and attitudes.¹⁰ Better understanding of pedagogy and learning theory, more critical examination of the needs of workplaces and professions, and the growth of regulation in higher education had culminated in a focus on outcomes-based education in law and in other

¹⁰ For an excellent overview of these developments see Anna Huggins, 'Incremental and Inevitable: Contextualising the Threshold Learning Outcomes for Law' (2015) 38(1) *UNSW Law Journal* 264. See also Paul Hager and Susan Holland (eds), *Graduate Attributes, Learning and Employability* (Springer, 2006).

disciplines.¹¹ As a result, in many jurisdictions, the development of graduate attributes and program or threshold learning outcomes was being given increasing emphasis.

While these developments were occurring in many jurisdictions around the world, and being influenced by and influencing each other, it was not assumed that modern legal education could or would be the same everywhere. Rather, while common themes were developing, extensive research in individual jurisdictions looked at what these ideas would mean locally. Australia, the USA, Canada and the United Kingdom, amongst others, each issued statements on the competencies required of their law graduates, each based on research squarely focused on their own jurisdictions.¹²

Equivalent research was not available in relation to the competencies required of LLB graduates in the South Pacific. This had been noted previously. In 2005, for example, USP's School of Law had identified the need to undertake research amongst 'stakeholders' to 'ensure that our graduates who are entering the legal profession are meeting the requirements of professional bodies in the region',¹³ but the research does not appear to have been carried out.¹⁴ USP then developed its own university-wide graduate attributes in 2008, and the School of Law followed suit, attempting to identify, develop and assess the attributes with which its own students should be

¹¹ Huggins, above n 10.

¹² Sally Kift, Mark Israel and Rachael Field, 'Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching Academic Standards Statement' (Australian Learning and Teaching Council, 2010) Appendix 3: National and International Comparison Tables (including references to all other studies), 29.

¹³ USP School of Law, 'Teaching Plan 2006–2011' (2005) Action Plan 9.

¹⁴ I have searched for relevant research without success. If there was further research undertaken it does not appear to be accessible any longer. It was not made available to those drafting PLOs in 2011. Note also that in 2011 the Faculty of Arts and Law, School of Law, 'Annual Teaching Plan for 2011' (held by author) still included 'survey[ing] past graduates to assess the relevance of the USP law degree.'

endowed upon graduation.¹⁵ The attributes identified seem to have been based on knowledge drawn from within the Law School, and from graduate attributes developed in other jurisdictions, rather than from broader research undertaken locally.

Further relevant developments took place overseas between these 2008 activities and the introduction of USP's 2011 STAR program. In Australia, threshold learning outcomes (TLOs) to be achieved by all Bachelor of Laws graduates were developed in 2010, as part of a demonstration project of the Australian Learning and Teaching Council (ALTC).¹⁶ When these standards for Australian law degrees were disseminated, the School of Law at USP sought to ensure that its graduates met those new Australian standards. The Head of the USP School of Law wrote at the time: '... this is of sufficient importance that we, as a Law School, should start doing our own work on ensuring that our LLB satisfies the knowledge and skills requirements that are outlined in the proposed [Australian] TLOs.'¹⁷

In 2011 the Australian Government created the Tertiary Education Quality and Standards Agency (TEQSA). One of TEQSA's briefs was to ensure that all Australian higher education programs met certain 'threshold' standards.¹⁸ As part of the Australian Qualifications Framework (AQF), these were to be Australia-wide, discipline-specific, academic standards which every graduate of a relevant discipline would be

¹⁵ 'Integrating Discipline Specific Attributes into Assessment' (Notes from the USP School of Law Teaching and Learning Workshop, Port Vila, Vanuatu, December 2008) (held by author).

¹⁶ Kift, Israel and Field, above n 12, 9.

¹⁷ Email to author from Peter MacFarlane, Head of USP School of Law, October 2010.

¹⁸ Australian Government, Tertiary Education Quality and Standards Agency, *TEQSA and the Australian Qualifications Framework: Questions and Answers* (February 2013) 2.

TEQSA's role is to regulate all higher education providers and ensure that providers and their courses meet the Threshold Standards ... TEQSA applies the Threshold Standards, including the Qualification Standards, when deciding whether to grant registration or renew a provider's registration or to accredit courses. The Qualification Standards, in turn, require providers to ensure that all their Higher Education awards that lead to AQF Qualifications meet the corresponding specifications in the AQF.

expected to have achieved. As mentioned above, these were based on extensive research into the needs of law graduates in Australia.

The STAR program introduced at USP in 2011 required that learning outcomes be articulated for each program of study. Staff of USP's School of Law were split into two groups, one to map the skills and knowledge assessed in existing courses, the other to draft appropriate program learning outcomes (PLOs). I was assigned to the latter group, along with three or four colleagues. Armed only with a copy of Australia's Threshold Learning Outcomes for Law,¹⁹ and the knowledge and experience of the few individuals involved, we tried to work out what might be the appropriate PLOs for the South Pacific law degree. Unfortunately, there was still no research base regarding the legal needs of graduates in local jurisdictions. How then could we determine what knowledge, skills and attitudes local graduates would need, and hence what the PLOs for the South Pacific LLB should be? While generic 'legal' knowledge and skills were more easily identified, there was insufficient information from which to draft locally focused PLOs. It was clear that if PLOs were to suit the local context, and prepare graduates effectively for careers in the South Pacific, they would need to be based on local information and not on guesswork, nor on the identification of generic lawyers' skills.

Because there was no sufficient research base from which to build, the local PLOs were largely based on the TLOs identified as necessary in Australia. Given that those TLOs were drafted as uniform requirements for all Australian law graduates, they were not overly jurisdiction-specific, but rather identified broader needs relevant to law graduates in any Australian jurisdiction. Although they were a result of considerable

¹⁹ Kift, Israel and Field, above n 12, 9.

research and consultation, they were aimed at determining the preparatory needs of a lawyer *in Australia*. Having encountered just a few of the differences between Australian and local jurisdictions, I was concerned that too readily following the Australian PLOs may divert attention from the local context, and so hinder the identification of perhaps more relevant and necessary learning outcomes. While some of the Australian learning outcomes may have suited South Pacific lawyers, determining their suitability would require more knowledge about local legal environments. Overall, it appeared that legal education in the South Pacific was attempting to stay in line with developments elsewhere, but without the research base necessary to ensure those developments were well suited to the local context.

The experiences outlined above — encountering frequent criticisms of local lawyers, mismatches between my own and my students' worlds and understandings, and application of overseas educational developments without sufficient contextualisation — all concerned me. They demonstrated a real and continuing need for research into the local legal environment and the educational needs of local lawyers.

2. The Research Problem and Literature Review

The experiences outlined above suggested a potential for misalignment between the needs of South Pacific lawyers and their legal education. Law School administration, courses, content and learning outcomes were being determined and designed in line with structures and processes imported from elsewhere, and taught and implemented by teachers who (or at least some of whom) may not have had a deep understanding or lengthy experience of the local legal environment, or of teaching law.²⁰ Further,

²⁰ Not all staff were foreign, short-term appointees, lacking depth of experience in the region, but many were.

because the needs of local graduates once they entered the profession had not been ascertained, it was possible that there were very real gaps between some of the learning and teaching occurring in the Law School and the needs of local lawyers. I wondered whether legal education could be more closely aligned to the needs of the local legal environment, to ensure that graduates were better prepared for *this* context.

Naturally enough I began by reviewing the relevant literature. Cognisant of the danger of assuming that overseas literature would be relevant in the local context, I began only with work related directly to the South Pacific. Apart from the flurry of writing in the area prior to and around the establishment of USP's LLB and practical legal training programs,²¹ there was only a small body of scholarship on legal education in the region, which, with the odd exception, was written by foreigners. Some works dealt with quite specific topics, while others provided broader insights and are discussed below.²²

Corrin Care and Farran, and later Corrin Care alone, provided the broadest examination of local legal education, ranging across both the learning needs of local

²¹ This work is discussed in Chapter Four Development of the Local Legal Profession.

²² To document these resources, those not discussed include Mohammed Ahmadu, 'Legal research and teaching in the South Pacific' (2004) 26(2) *Directions: Journal of Educational Studies* 53; Helen Menard, 'The Online Experience — The Students' Perspective' (2004) 26(2) *Directions: Journal of Educational Studies* 27; A Ricketts, 'Online Education in the South Pacific' (Paper presented at the Asia Pacific Initiative Conference, United Nations University, Tokyo, Japan, March 2008); Peter MacFarlane, 'Dishonest Practice — Law Students and Plagiarism' (Paper presented at the Pacific Island Law Officers Network Annual Meeting, Apia, Samoa, December 2009). Conference presentations related to practical legal training included: Suruj Sharma, 'The Teaching of Law in the South Pacific' (Paper presented at the Australasian Professional Legal Education Conference, Auckland, New Zealand, November 2008); Nainendra Nand, 'Legislative Drafting, Distance Education, and its Contribution to Good Governance in the Pacific' (Paper presented at the Fifth Pan Commonwealth Forum on Open Learning, London, July 2008). Some of these works may no longer be available.

students and the subject matter of South Pacific law itself.²³ Their work examined some of the complexities and difficulties of teaching law in this environment, noting geographical factors, student diversity, and issues of language and culture. They noted that geographically the land area of the USP region is little bigger than Denmark, but is spread over 33 million square kilometres (more than triple the size of Europe²⁴), creating numerous relatively isolated and diverse communities. Within one state there may be many ethnic and cultural backgrounds, including those indigenous to the Pacific Islands such as Melanesian, Micronesian and Polynesian, and non-indigenous backgrounds such as Indian, Chinese, Japanese and European, and combinations of them all.²⁵ Within a single state or ethnic group there is also further diversity, with some South Pacific areas identified as having the greatest levels of language diversity in the world, and a proliferation of introduced religions grafted onto varying traditional beliefs. Despite the diversity, drawing on the work of Tongan academic and poet Konai Thaman, the authors discussed some of the more general cultural orientations of Pacific Islanders, and drew distinctions between those and ‘Western/Industrial/Urban’ orientations.²⁶ Corrin Care and Farran clearly stated the importance of placing education within the local context, and of teachers recognising, understanding and respecting their students’ past experiences and world views. They pointed to the need to provide not a general common law legal education but one appropriate to South Pacific students.

²³ Jennifer Corrin Care and Susan Farran, ‘Law in the Pacific: Implications of Jurisdictional, Cultural and Ethnic Diversity for the Teaching of Law’ (1997) 31(3) *The Law Teacher* 283; Jennifer Corrin Care, ‘Finding the Right Balance in Plural Legal Systems: Training Lawyers in the South Pacific’ (2006) 4(2) *Journal of Commonwealth Law and Legal Education* 171.

²⁴ Corrin Care and Farran, above n 23, 284.

²⁵ Ibid 285.

²⁶ Ibid 290, quoting Konai Helu-Thaman, ‘Hints for Teachers at the University of the South Pacific: (Multi) Cultural Sensitivity’ (1996) 5(2) *Pacific Curriculum Network* 6
<<http://www.directions.usp.ac.fj/collect/direct/index/assoc/D1065015.dir/doc.pdf>>.

Ricketts approached the issue of tailoring education to the needs of local students from a different direction, without reference to Corrin Care and Farran. He examined the possible clash between the likely world views of South Pacific students and the assumptions and expectations of ‘thinking like a lawyer’.²⁷ He raised issues of the likely distance between local students’ world views and the threshold concepts required for understanding common law, noting that for Pacific students the study of state law requires coming to terms with knowledge which is both foreign and counterintuitive.²⁸ Ricketts used the framework of ‘troublesome knowledge’ and ‘threshold concepts’ to examine ideas which local students would need to take on to enable them to ‘think like lawyers’.²⁹ He saw the process of ‘learning to think like a lawyer’ generally as both transformative and irreversible, and, in the South Pacific context, possibly also antithetical to local students’ existing belief systems. Ricketts was concerned that teaching state law and its assumptions as though they were politically and culturally neutral would have a potentially ‘colonising effect’ on local students, and hence raise ethical issues for teachers. He suggested that teaching legal thinking from a critical and sceptical perspective would allow local students to understand and use the common law, but without subjugating their own world views and local perspectives. Like Corrin Care and Farran, Ricketts’ work emphasised the need for teachers to recognise and take account of their students’ characteristics, backgrounds, experiences and world views.

²⁷ Aidan Ricketts, ‘Threshold Concepts in Legal Education’ (2004) 26(2) *Directions: Journal of Educational Studies* 2.

²⁸ Ibid 11.

²⁹ Ricketts borrows the concepts from J Meyer and R Land, ‘Threshold Concepts and Troublesome Knowledge’ (Occasional Report 4, Enhancing Teaching and Learning Project, University of Edinburgh, May 2003); and ‘Threshold Concepts and Troublesome Knowledge (3): Implications for Course Design and Evaluation’ in C Rust (ed), *Improving Student Learning: Diversity and Inclusivity* (Oxford Centre for Staff and Learning Development, 2005).

Corrin Care and Farran also discussed the content of legal training, including the need for, and difficulty of, teaching a dozen national legal systems, as well as plural systems in those states where both *kastom* and introduced law remained important. Acknowledging that the task was daunting, particularly for new teachers, Corrin Care and Farran nonetheless asserted that attention to the law of individual jurisdictions was a real obligation rather than a merely ideological aim.³⁰ Additionally, they noted that teaching law in the South Pacific was bedevilled by the uncertainty, complexity and plurality of laws, combined with a lack of research resources. They discussed the constant need to balance specific and general aspects, as ‘students have to be taught the characteristics of each individual legal system without losing sight of the regional dimension’.³¹ In summary, Corrin Care and Farran provide insight into issues of both pedagogy and curriculum content, illuminating for law teachers in the South Pacific the complexity of local law, the diversity of students, and many of the issues which teachers are likely to encounter.

The importance of making connections between classroom content and the local environment has been discussed in a number of articles. Faerua, a Ni-Vanuatu academic, emphasised the importance of topics which were ‘culturally and socially familiar’ to students, particularly to help them develop writing skills.³² He noted, for example, that students would have difficulty writing about ‘a hypothetical problem concerning insider trading in a company, but will quickly express themselves on a hypothetical problem concerning a land dispute in a village community’.³³ Faerua

³⁰ Corrin Care and Farran, above n 23, 299.

³¹ Ibid 304.

³² Arthur Faerua, ‘The Teaching and Learning of Legal Writing Skills: Observations from Emalus’ (2004) 26(2) *Directions: Journal of Educational Studies* 41, 50.

³³ Ibid.

suggested therefore that, before expecting students to write on complex, foreign concepts, they should be given opportunities to develop their written skills through activities based around local, familiar topics. Farran, recognising that both individual personalities and cultural influences may otherwise constrain engagement in the classroom, suggested games as a way to get local students actively involved.³⁴ She suggested that role-play could engage students, and ensure that their learning moved from static and theoretical to local and practical. Role-playing could be used to help students recognise the interrelatedness of various actors in the local governance and legal communities, such as judges, chiefs, lawyers, drafters, police and members of parliament.³⁵ Similar to Faerua's suggestion for writing on local topics, Farran saw the benefit of speaking on topics relevant to local communities. She suggested the use of short impromptu speeches on matters such as parliament, nepotism, pigs, racism, fish, chiefs, ombudsmen, newspapers or elections to actively involve students while encouraging them to make use of their existing local knowledge.³⁶

Ricketts and Olowu concentrated on how to bring larger topics closer to home. Ricketts discussed the need to help local students move between conceptual or theoretical understandings of a topic and its actual application in the local setting by, for example, interweaving the broader principles of constitutional law with the more immediate issue of repeated coups d'état in Fiji.³⁷ Olowu suggested that moving from universal to regional to national would bring seemingly distant events or theoretical

³⁴ Sue Farran, 'Playing Games in the Classroom' (2003) 12(1&2) *Pacific Curriculum Network* 21.

³⁵ Ibid 21–2.

³⁶ Ibid 23.

³⁷ Aidan Ricketts, 'Teaching Constitutional Law to Fiji Students: The Separation of Powers and the Rule of What?' (2009) 2(1&2) *Journal of the Australasian Law Teachers Association* 207.

concerns closer to home for students.³⁸ For example, focusing on human rights, he began with Rwandan experiences before confronting students with similar events which had occurred in West Papua, squarely within their own region.³⁹ Likewise, the problems of HIV in Africa were brought home via subsequent focus on the occurrence of the virus in South Pacific nations.⁴⁰ While approaching the topic from different directions, Faerua, Farran, Ricketts and Olowu all identified the importance of ensuring that course content and learning activities were relevant and concrete for local students and their communities.

Grimes also discussed the need for content to be closely contextualised to the local environment, particularly in relation to ethics. He noted that in early discussion of ethics teaching at USP ‘there was a presumption that ethical standards were understood by all and immutable’.⁴¹ Grimes, however, recognised the need for integrating professional and contextual aspects, and of developing an understanding of what ethics meant in the local environment.⁴² He suggested that clinical legal education could provide that connection between broad ethical concepts and ethics on the ground.⁴³ Students would be exposed to live ethical issues, requiring real engagement, application of problem-solving skills, and authentic resolution. While

³⁸ ‘Dejo Olowu, ‘Human Rights Law in a Multicultural Regional University: A Reflective Experience in Pedagogy’ (2004) 26(2) *Directions: Journal of Educational Studies* 13, 16.

³⁹ Ibid 21.

⁴⁰ Ibid.

⁴¹ Richard Grimes, ‘Learning and Practising Law in the South Pacific — The Ethical Dimension’ in Kim Economides (ed), *Ethical Challenges to Legal Education and Conduct* (Hart, Oxford, 1998) 187, 193.

⁴² Ibid 200.

⁴³ Richard Grimes, ‘Culture, Custom and the Clinic — A Model for Legal Education in the South Pacific’ (1998) 24(1) *Monash University Law Review* 38; see also Peter MacFarlane, ‘The Teaching of Legal Ethics at the Undergraduate Level, [Working Paper] (2002) 6(2) *Journal of South Pacific Law* <<http://www.paclii.org/journals/fJSPL/vol06/>>.

textbooks dealing with ethics were foreign only, clinical practice could provide its own cases, and hence help to authentically situate ethical issues within the local context.⁴⁴

More broadly, Grimes saw clinical methods of legal education as well suited to the local environment, regardless of content. Recognising the incongruity of using standard Western ‘transmission style’ teaching to prepare local students for working in South Pacific law, Grimes saw clinical study as an excellent way for students to engage with ‘real’ law, which included both state law and *kastom*, and local procedure and practice.⁴⁵ Grimes recognised that, whether live or simulated, clinical style learning and teaching gave an opportunity to improve the skills students needed in the local environment, including oral and written communication, problem-solving, advocacy and negotiation. Clinical work could bring students face to face with practical matters of dispute resolution, and give them both a better appreciation of ethical issues likely to arise in the local environment, and preparation for dealing with such matters in practice. For Grimes, a major benefit of clinical teaching was the ability to break down dichotomies, such as academic versus vocational, and hierarchies, such as teachers over students. He saw the potential for better learning outcomes from increasing student engagement with local legal content, processes, teachers and the broader community. Much of Grimes’ view regarding the benefits of clinical training in this environment was reinforced by Hill, following his experience running the Law School’s Community Legal Centre (CLC), introduced in 2002.⁴⁶

⁴⁴ Grimes, ‘Culture, Custom and the Clinic’, above n 43, 64; Edward Hill, ‘The USP Community Legal Centre: Combining Legal Education and Legal Services in a Developing Island Country (Working Paper)’ (2004) 8(1) *Journal of South Pacific Law* <<https://www.usp.ac.fj/index.php?id=13270>>.

⁴⁵ Grimes, above n 43, 63–4.

⁴⁶ Hill, above n 44.

Far-reaching dilemmas were raised, but not resolved, by Corrin Care and Farran. They questioned the practice of engaging foreign law teachers given the ‘cultural diversity and distinctions of the region’ of which ‘some lecturers coming to the University may be profoundly ignorant’.⁴⁷ They further raised the dilemma created by the legal inheritance of the region being based on ‘western, industrial culture ... yet the aim of the University is to produce regional lawyers’.⁴⁸ They noted the potential for legal education, in its development of legal skills, to distance local lawyers from their own cultural context, but recognised also that prioritising traditional cultures would ignore the legal frameworks within which local lawyers need to operate.⁴⁹ In a later article regarding practical legal training, Corrin Care referred to the fine balance between ‘bowing to local culture, and instilling professionalism’.⁵⁰

Although focusing on a diverse range of topics, all of the works cited above recognised a need for local legal education to pay close attention to context, and highlighted factors of particular relevance with which both curriculum content and teaching methods would need to align.

While most of the literature focused on the content and pedagogy required as a result of students’ backgrounds, and of the South Pacific environment more generally, Corrin Care, Farran and Grimes also linked legal educational needs to the requirements of practice. They each mentioned, as did Cartledge,⁵¹ the common practice of prematurely elevating South Pacific lawyers into positions of seniority and

⁴⁷ Corrin Care and Farran, above n 23, 293.

⁴⁸ Ibid.

⁴⁹ Ibid 294.

⁵⁰ Corrin Care, above n 23, 185.

⁵¹ ‘USP graduates are ... often thrust into positions of authority and responsibility beyond the level of their ‘training’ and without the support of an experienced mentor. They are literally thrown in at the deep end.’ Cartledge, above n 1.

responsibility, often without the necessary assistance or mentoring, and burdened with unreasonable expectations.⁵² As a result, they recognised the need for new graduates to enter local workplaces already well prepared for practice, and, in particular, with skills in communication and ethical practice.⁵³ In terms of communication, it was noted that much of the local population was illiterate, many would find English language inaccessible, and almost all would find legal language completely incomprehensible.⁵⁴ Lawyers would therefore need skills in both legal drafting and spoken English for court and other formal processes, but would need to use local languages for dealing with the majority of clients. In particular, they would need an ability to write and speak using simple and easily accessible language for most interactions within their own communities. It was suggested that these communication skills could be well developed in a clinical setting, which would also develop ethical skills.⁵⁵

Grimes and later Hill also emphasised the possibility of enhancing broader professional skills through clinical practice. Skills in problem-solving, collaboration, personal organisation and case management would all be developed by clinical approaches which required regular and ongoing activity on the part of students. This in turn would create higher levels of engagement between students, staff, clients and the profession, and increase opportunities for feedback and guidance.⁵⁶

⁵² See, eg, Corrin Care, above n 23, 183–4; see Hill, above n 44, with reference to a new graduate appointed as the Public Prosecutor: ‘many newly qualified graduates will return to their country and assume a position of immediate authority where an experienced mentor cannot be taken for granted. Those around them will frequently assume that they know all there is to know about practice.’

⁵³ Corrin Care and Farran, above n 23, 307–8; Grimes, above n 43, 63.

⁵⁴ Corrin Care, above n 23, 184–5; Grimes, above n 43, 51.

⁵⁵ Grimes, above n 43, 51; Hill, above n 44.

⁵⁶ Grimes, above n 43; Hill, above n 44.

The above literature would benefit any legal educator in the South Pacific, and was extremely useful to me in my role as a law teacher at USP. It highlighted the complexities of the region and of the law degree's subject matter, and stressed the importance of using pedagogical methods suited to local students to help them connect with this material. It outlined the importance of well-developed communication, and ethical and professional skills. There were, however, significant gaps. Firstly, apart from these later mentioned pieces, there was little focus in local educational literature on the broader legal environment which our graduates would encounter *after* completing their studies, and for which they would need to be prepared. Hence, while staff of the School of Law were being required to list the PLOs appropriate for law graduates, there was little information to draw upon in the local educational literature for determining what those outcomes should be.

Secondly, the literature that was available did not include local voices. While hugely helpful in passing on the experiences and observations of other (largely foreign) teachers and those involved in legal education more broadly, it did not include input of local graduates regarding their experiences in professional practice in the local environment. It appeared to me that local lawyers would be an excellent source of knowledge regarding the learning outcomes appropriate for local graduates, and further, that acknowledging the importance of local lawyers' views and experiences would help to progress decolonising approaches.

3. The Research Question

As noted above, South Pacific nations are diverse and complex. Legal education is sometimes planned and implemented without a deep knowledge of the diversity and complexity of local laws and legal systems, the local legal profession, or the broader

local environment. To avoid mismatches and ensure alignment between legal education and graduate needs, it is worth asking, as USP has done, ‘what learning outcomes are required to prepare law graduates for the local legal environment?’ However, to answer this question it is necessary first to discover ‘what *is* the local legal environment?’ This thesis seeks to provide an initial answer to this question as it relates to two South Pacific jurisdictions: Solomon Islands and Vanuatu. It does so through the use of both documentary and empirical research which includes the views and experiences of local lawyers and those who work with them.

As far as I am aware, this is the first study of South Pacific legal education that directly reports the views of local lawyers regarding their experiences in these local jurisdictions. While literature shows that local lawyers have sometimes been consulted in research relating to legal education and the local legal environment, as far as I can see their views have not been directly reported, nor distinguished in the resulting literature from the views of foreigners.⁵⁷ This thesis is therefore significant and unique in that it provides an opportunity for local lawyers to have their voices heard, and to have their experiences and perspectives taken into account by law teachers and other decision-makers. Further, it provides legal educators with information entirely relevant to local jurisdictions, and gives them access to the views and experiences of those on whom their work has the greatest immediate impact.

⁵⁷ See, eg, regarding consultation on the needs for continuing legal education: Richard Grimes, ‘Identifying and Satisfying Needs for Continuing Legal Education in the South Pacific’ (1995) 13(2) *Journal of Professional Legal Education* 199, 204, 211 n 21; Advantage Management Consultancy, ‘Continuing Legal Education in Vanuatu’ (June 2009) 7; regarding consultation for reviews of USP’s School of Law: David Barker, ‘University of South Pacific Law School Review’ (2005) (held by author); The University of the South Pacific, ‘Review Panel Report’, above n 6; regarding consultation on legal strengthening programs: AusAID, above n 1, Annexure 13, 11; AusAID, ‘Delivery Strategy, Solomon Islands Justice Program (SIJP) July 2013 to June 2017’ (2013). Of all the above, the latter is the only one which notes the views of individuals or departments: see Attachment 1: Solomon Islands Ministry of Justice and Legal Affairs — Draft Concept Note for RAMSI Transition, v8 July 27th 2012, 47–50, Key Points from each Presentation.

4. Structure of the Thesis

Having identified the area of study, reviewed the literature on the topic, and explained the research question, this section now sketches the structure of the remainder of this thesis.

Chapter Two discusses the methodology and research methods used for investigating the local legal environment as it relates to legal educational needs in Solomon Islands and Vanuatu. The research is positioned within the interpretive paradigm, and uses case study methodology to illuminate and explore the topic. The qualitative empirical work undertaken, which included interviews with 80 participants involved in the local legal sector, is also explained. This chapter considers the need for awareness of decolonising approaches and the importance of using appropriate methods and methodology when researching with Indigenous and formerly colonised peoples. It also discusses the steps taken to ensure that this research is respectful and non-exploitative.

Chapters Three, Four and Five explain the development of law, the legal profession and legal education in the South Pacific, with particular reference to Solomon Islands and Vanuatu. While these chapters could be characterised as ‘background’, they are in fact essential to any understanding of the contemporary local environment, and provide context for the chapters which follow. Chapter Three traces the development of local laws and legal systems from traditional times, through the colonial period, and into the creation of the newly independent nations of Solomon Islands and Vanuatu. It also contrasts the contemporary circumstances of these states with those of Australia and New Zealand, to highlight some of the distinctions between them, and the resulting need for a local focus in South Pacific legal education.

Chapter Four examines the development of the legal profession and legal education in former colonies generally, and in the South Pacific in particular. Pointing out the many features common across post-colonial states, this puts the development of South Pacific legal education into its broader historical context, and helps to explain some of the tensions or mismatches apparent today.

Chapter Five focuses on the law curriculum as introduced to the South Pacific, and examines the commonalities between the curriculum followed locally and those of other post-colonial states. This chapter also examines more recent developments such as the identification of PLOs, showing the continuing influence locally of developments occurring beyond the region. Overall, Chapters Three, Four and Five provide a foundation for understanding contemporary laws and legal systems, the legal profession and legal education in the South Pacific, while also highlighting the historic and continuing influence of introduced or foreign activities and developments.

Having established the context, Chapter Six presents an intrinsic case study, drawing a rich picture of the work of local lawyers and the contemporary legal environment. This chapter is broken into four parts. The first part focuses on the work of local lawyers, their experience of and opportunities for learning to be lawyers, and their ongoing development needs. The findings in this part show that local lawyers undertake a very broad range of roles, rarely have opportunities to specialise, and may find themselves in positions with little professional guidance and supervision, but subject to high expectations and heavy demands. Lawyers in these jurisdictions often rely on experiential learning opportunities for development of their competencies, and on continuing education and training provided by aid donors or other external organisations.

The second part of the chapter focuses on the learning outcomes perceived to be necessary for local lawyers. The findings confirm the need for local lawyers to attain all the learning outcomes identified by USP's School of Law and commonly identified for lawyers elsewhere, including knowledge, ethics and professionalism, communication, research and reasoning skills. However, the findings demonstrate also the extreme importance of contextualising each of these seemingly generic outcomes to the local environment, and provide relevant content to assist in that contextualisation.

The third part of Chapter Six adds documentary and other data which illuminates important features of the legal environments of Solomon Islands and Vanuatu, and helps to identify and explain some of the many challenges facing local lawyers and the local legal profession more broadly. The findings presented in this part give a larger context to many of the issues raised by participants and reported in the previous two sections.

The fourth part of Chapter Six brings together the findings of the previous three parts, and synthesises these to provide a more integrated picture of the whole. It is hoped that the case study presented in this chapter will provide an important resource for others wishing to better understand the legal environments of Solomon Islands and Vanuatu, especially given its inclusion of the views and experiences of local lawyers, of foreigners working in these jurisdictions, and its extensive reference to the extant documentary data.

Chapter Seven looks at the potential for using the case study from Chapter Six more instrumentally. This chapter identifies implications for undergraduate legal education in the South Pacific, and makes tentative suggestions for how these might be acted

upon. The case study shows the need for local graduates to be well prepared for practice, and the need for that preparation to be closely contextualised to the local environment. Drawing on social constructivist learning theory, suggestions are then made as to how this might be done. The chapter concludes by looking at some of the resources and activities which would be needed to enable such suggestions to be implemented.

Chapter Eight provides a brief conclusion to the thesis, including a short overview of the project undertaken and a personal reflection upon the nature of this kind of research.

5. Limitations and Delimitations

a) Limitations

While the South Pacific law degree educates lawyers from 12 different jurisdictions, the empirical research conducted for this thesis covered only Solomon Islands and Vanuatu. I was concerned that a broader study may lead to a flattening or homogenising of results, rather than a deeper and more detailed study which focusing on only two states allowed.⁵⁸ I chose to focus on Solomon Islands and Vanuatu because I was familiar with both, they have many similar features, and have fewer

⁵⁸ The potential for a regional law degree itself to cause homogenisation was a concern raised very early on:

[T]he essential feature of Pacific Island legal systems is that each is unique and desires to remain so...

The temptation, of course, will be to look for common areas of law, and aspects of legal process which are similar rather than novel. Many factors will encourage educational planners and law teachers to adopt common ground wherever possible ...

An appropriate balance will be difficult to achieve, and a 'slide towards conformity' almost inevitable ...

[For some] such a Law School will be a testing ground — where the distinctiveness of Pacific Island legal systems will be either preserved or destroyed.

C Guy Powles, 'Learning Whose Law? Legal Education in Plural Societies. Choices for the Pacific Island Region' in Commission on Folk Law and Legal Pluralism, *Papers presented to the Congress at Victoria University of Wellington, August 1992* (Law Faculty, Victoria University of Wellington, 1992) 256, 260, 262, 263, 266.

areas of difference between them than between them and many other South Pacific states. Nonetheless, aspects of this research will be applicable to one or the other only, while some aspects will be applicable across the South Pacific more broadly. It is hoped that this small research project focusing on two South Pacific states will encourage similar research in other local states.

As interpretive work, this research is also limited in that it relates to a particular place and time, includes views and voices of some local people and not others, and was designed and undertaken by a foreign legal academic. However, it is not intended to draw a positivist picture of ‘what is’, but rather to provide a starting point for increasing connections between legal educators, legal education, the legal profession, and the environment within which law graduates work. It is also not intended as the last word on the topic, but rather as a modest contribution to the further development of legal education scholarship and practice in the South Pacific.

To the extent that this research draws upon my personal experience, I lived in Vanuatu for two years, 2010 and 2011. I was affiliated with the USP Law School and also visited Solomon Islands numerous times during this period. Since my return to Australia I have made a number of research-related visits to both states, and I have retained contact with many staff and former students. I maintain an interest in developments in these countries but I now view the situation from a distance.

Finally, it must be noted that, while Vanuatu has a French legal heritage in addition to the British, this thesis focuses on the latter. It is this British common law heritage, and its subsequent development, which is covered by USP’s LLB degree.

b) Delimitations

The South Pacific region is awash with interesting opportunities for legal researchers. Some researchers have focused primarily on substantive areas of state law or *kastom*, while others have looked at broader issues such as legal pluralism, law and development, or postcolonialism. While all of these topics (and many more) are relevant to this work, South Pacific legal education is its focal point.

Despite its focus on the South Pacific, references to Australia and New Zealand feature heavily throughout the thesis. As will be discussed, almost all Heads of USP's Law School, and many of its staff, have been drawn from these jurisdictions. Universities in Australia and New Zealand are the main competitors for local law students. USP therefore seeks to make its own programs comparable with those in Australia and New Zealand, and to ensure that USP law graduates can be admitted to practice in those states. Australia and New Zealand provide considerable aid funding and activities, and have a significant presence and impact throughout local legal sectors. Much of the research related to the South Pacific, and to Melanesia in particular, has also been undertaken by Australians and New Zealanders. As a result, it is often necessary to discuss Australia and New Zealand in relation to the local legal environment, and appropriate to use these states (rather than other western states) as a counterpoint to South Pacific jurisdictions.

This thesis is not a critique of USP, its Law School or its law degree. It is aimed rather at uncovering and exploring aspects of the local legal environment which may offer insight into legal educational needs. Because I worked at USP's School of Law and most local lawyers study there, and because until recently USP offered the only law degree in the Pacific Islands, USP's law degree is often referred to in this work to explain

aspects of the legal education currently available in the South Pacific. However, others will be better aware than I am of current aims, issues and constraints of USP, and it is not my intention to direct their work. Rather, this thesis seeks only to make accessible information which may assist in the continued development of legal education for this region, no matter who it is provided by.

Finally, this research project is intended primarily to make a useful, practical contribution to legal education for the South Pacific generally, and for Solomon Islands and Vanuatu in particular. It aims to do so through increasing awareness of the setting within which local lawyers work and by providing additional context for legal educators. I hope it will assist new law teachers to engage more quickly and more deeply with local matters, and encourage further work to help align legal education with the needs of local law graduates. Most importantly, this work is intended to acknowledge the importance of the views and voices of those most directly and immediately affected by local legal education, and to show respect for their perspectives and experiences.

CHAPTER TWO: METHOD AND METHODOLOGY

1. Introduction

The overriding motivation for this research was to assist in improving legal education in the South Pacific. However, in thinking about how that might be done it became apparent that there was little accessible information about the educational needs of and opportunities for local lawyers, the work local lawyers undertook, or the context in which this work took place. The literature that was available was enormously helpful in understanding many of the challenges facing both teachers and students of law. However, there was less information regarding the needs of graduates, which could help to determine appropriate program outcomes for the local Bachelor of Laws (LLB) program. Further, while local lawyers individually, and possibly even collectively, would know a great deal about their own needs and the opportunities available to them, their views were not readily accessible to law teachers or others making decisions about legal education in the South Pacific. It seemed that if more were known about the work of local lawyers and the context in which it took place, it would be much easier to ensure that local legal education addressed the needs of local graduates. This thesis is my attempt to contribute to South Pacific legal education by uncovering, presenting and exploring some of that knowledge.

Illuminating the legal environment of local jurisdictions was particularly important. In the past couple of decades, in many jurisdictions worldwide, there had been numerous investigations into the educational needs of lawyers.¹ But many of the studies had

¹ For example, Australia, the USA, the UK, Scotland, Europe and South America had all produced statements on the role and necessary content of legal education. See Sally Kift, Mark Israel and Rachael Field, 'Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching

been undertaken in jurisdictions with settled, well-established legal systems and legal education programs, extensive relevant empirical and theoretical literature, and numerous well-established bodies such as Law Societies, Bar Associations, Law Councils, Judicial Colleges and Law Faculties who could provide input into legal education needs.² In that context, there was less call for new in-depth studies of lawyers' experiences to inform decisions about, or practice in, legal education.

However, as discussed in Chapter One, the extent of the information available in the South Pacific was quite different. There were few accessible resources regarding the needs of local law graduates, or the environments in which they worked. There was a well-recognised need to build the capacity of the local legal profession, to improve access to justice, and to strengthen local legal systems, but little existing research to help do so. Fortunately, some of those involved in local legal education had a deep understanding of local legal environments, and had made and continued to make significant contributions to local legal education. Their views contributed greatly to this research project. However, many others involved in legal education in the South Pacific had little or no experience as educators and/or had little or no experience of the local legal environment. In these circumstances, a more thorough picture of the experiences

Academic Standards Statement' (Australian Learning and Teaching Council, 2010) Appendix 3: National and International Comparison Tables (including references to all other studies), 29.

² Ibid 1. Broader explanation of the research and consultation process:

The TLOs for the Bachelor of Laws were developed during 2010 by way of a broad, iterative consultation process and with the assistance of the judiciary, admitting authorities, legal profession, regulators, academics, students and recent graduates. The discipline community provided advice and feedback through the project's Expert Advisory and Discipline Reference Groups, an extensive local consultation process, and liaison with peak organisations, including the Council of Australian Law Deans and its Associate Deans' Network, the Law Admissions Consultative Committee, the Law Council of Australia, the Legal Services Commissioners, the Australasian Law Teachers Association, the Australasian Professional Legal Education Council, and the Australian Law Students' Association. The drafting process was also informed by national and international experts and the work of similar projects both within and outside Australia.

of local lawyers and of the contexts in which they worked would provide an important and much-needed resource.

2. Research Paradigm

This research sits within a constructivist interpretive paradigm which seeks to understand and illuminate human experience, rather than to discover generalisable or scientific truths (positivist paradigm), or to challenge current beliefs and create radical change in society (transformative paradigm).³ The constructivist interpretive paradigm assumes a relativist ontology — there is no *one* truth but rather there may be multiple realities — and a subjectivist epistemology that recognises that understanding is ‘co-created by both knower and respondent’.⁴ This paradigm is most appropriate here as the project seeks not to prove any particular hypothesis, nor to overturn current thinking, but rather to ‘uncover’ information regarding the legal environments of Solomon Islands and Vanuatu, which could help us to understand the educational needs and opportunities of local graduates.⁵ Such knowledge, drawn from the experience of participants in local legal systems and from documentary sources where available, could then be taken into account in decisions made about local legal education — decisions which until now have been made largely by foreigners, often

³ Bagele Chilisa, *Indigenous Research Methodologies* (Sage, 2012); Earl Babbie, *The Practice of Social Research* (Thomson Wadsworth, 2007); John W Creswell, *Research Design: Qualitative, Quantitative and Mixed Methods Approaches* (Sage, 3rd ed, 2009).

⁴ Norman Denzin and Yvonna Lincoln, *Collecting and Interpreting Qualitative materials* (Sage Publications, 3rd ed, 2008) 32.

⁵ Although I acknowledge that this paradigm has itself been ‘socially constructed using Euro-Western philosophies ...’: Chilisa, above n 3, 35.

without reference to local participants or their experiences. The need for such research has long been identified but not previously addressed.⁶

Despite spending two years reading, teaching and observing law in the South Pacific,⁷ I often felt that I had barely scratched the surface in my understanding of the local legal environment and local lawyers' needs. The law I was teaching seemed far removed from the local context and from the everyday experiences of local lawyers. As discussed in Chapter One, I was frequently confronted with mismatches between my own assumptions and the understanding of local students. I wanted to know where my teaching could be better aligned to the students' future needs and to their world. I wanted to get closer to the law in action, to get amongst the lawyers and find out how their educational experiences matched their workplace activities. Knowing that such information would be useful not just for me but for others who followed me, and to legal educators in the South Pacific more broadly, I realised that a thorough, systematic and methodologically rigorous study was called for.

3. Methodology

a) Case Study Research

To ensure this research could capture and preserve the richness and complexity of the topic, I chose to use a qualitative case study methodology,⁸ common in, and

⁶ Information needs identified by the University of the South Pacific, School of Law Working Group on Program Learning Outcomes, 2011. See also USP School of Law, 'Teaching Plan 2006–2011' (2005) Action Plan 9 (held by author):

Undertake survey of graduates and employers of graduates to identify satisfaction of stakeholders and continuing education needs. Rationale: We need to ensure that our graduates who are entering the legal profession are meeting the requirements of professional bodies in the region. This research will also identify continuing education needs in the region. Timeframe: 2006–2007.

⁷ I spent 2010 and 2011 in Vanuatu, and have returned to both Solomon Islands and Vanuatu numerous times since.

⁸ Sharan B Merriam and Elizabeth J Tisdell, *Qualitative Research: A Guide to Design and Implementation* (Jossey-Bass, 4th ed, 2016), 37–38:

appropriate to, educational research.⁹ Case studies have become increasingly popular in qualitative research¹⁰ and the methodology has received a great deal of attention over the last few years.¹¹ The case study is a qualitative approach¹² which has greater flexibility than many other qualitative approaches, as it can be designed to suit particular situations and research questions.¹³ For my research this meant that I could design the study to fit the topic I was looking at, while there was also plenty of guidance to help me choose between numerous possible approaches at each step of the work.

Research literature showed that case studies were judged to be particularly useful where knowledge of a situation is 'shallow, fragmentary, incomplete or non-existent',¹⁴ especially if the case is 'unusual, unique, or not yet understood'.¹⁵ This seemed ideal for this research topic as there was not yet much literature at hand. A

Part of the confusion surrounding case studies is that the process of conducting a case study is conflated with both the unit of study (the case) and the product of this type of investigation ... We have concluded however that the single most defining characteristic of case study research lies in delimiting the object of study: the case.

⁹ Sharan Merriam, 'Case Studies as Qualitative Research' in Clifton F Conrad, Jennifer Grant Haworth and Lisa R Lattuca (eds), *Qualitative Research Design in Higher Education: Expanding Perspectives* (Pearson, 2nd ed, 2001) 27.

¹⁰ Nerida Hyett, Amanda Kenny and Virginia Dickson-Swift, 'Methodology or Method? A Critical Review of Qualitative Case Study Reports' (2014) 9 *International Journal of Qualitative Studies in Health and Well-being* 23606 <<http://dx.doi.org/10.3402/qhw.v9.23606>>.

¹¹ See, eg, Hyett, Kenny and Dickson-Swift, above n 10; John Creswell, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (Sage, 3rd ed, 2013); Norman Denzin and Yvonna Lincoln, 'Introduction: The Discipline and Practice of Qualitative Research' in Norman Denzin and Yvonna Lincoln (eds), *The SAGE Handbook of Qualitative Research* (Sage, 4th ed, 2011) 1; John Gerring, 'What is a Case Study and What is it Good For?' (2004) 98(2) *American Political Science Review* 341; Sharan B Merriam, *Qualitative Research: A Guide to Design and Implementation* (Jossey-Bass, 3rd ed, 2009); Robert E Stake, 'The Case Study Method in Social Inquiry' (1978) 7(2) *Educational Researcher* 5; Robert Stake, *The Art of Case Study Research* (Sage, 1995); Robert Stake, 'Case Studies' in Norman Denzin and Yvonna Lincoln (eds), *Strategies of Qualitative Inquiry Vol. 2* (Sage, 2011) 86; Malcolm Tight, 'The Curious Case of Case Study: A Viewpoint' (2010) 13(4) *International Journal of Social Research Methodology* 329; Robert K Yin, *Case Study Research: Design and Methods* (Sage, 4th ed, 2009); Robert K Yin, *Applications of Case Study Research* (Sage, 3rd ed, 2012).

¹² Denzin and Lincoln, 'Introduction: The Discipline and Practice of Qualitative Research', above n 11.

¹³ Hyett, Kenny and Dickson-Swift, above n 10.

¹⁴ Keith F Punch, *Introduction to Research Methods in Education* (Sage, 2009) 123.

¹⁵ Ibid.

case study would allow a broad exploration of issues arising in the local environment, rather than the research being confined to pre-determined categories derived from prior studies. This methodology could also allow a 'fuller understanding of phenomena and processes, to flesh out the picture in a way both crucial to understanding, and not possible using more superficial techniques'.¹⁶ That is, a case study could be designed to explore the work of local lawyers and the environment within which law was practised in the specific context of Solomon Islands and Vanuatu. It could encompass as many aspects of the local legal environment as were relevant to ensure the topic was understood squarely within its local setting. Further, case study methodology allowed me to set out the findings at length, which would 'provid[e] readers with good raw material for their own generalizing.'¹⁷

In addition, and perhaps more importantly, by allowing fuller presentation of the data, the case study provided an opportunity to ensure that the views and experiences of local lawyers were more fully reported, and made visible in conversations about legal education. Until now, legal education for local lawyers has often been based on overseas developments and foreigners' knowledge and understanding of legal education needs, as discussed previously and in following chapters. While this may have been understandable in the early period of local legal education, I was

¹⁶ Ibid. See also Robert K Yin, 'Introduction' in Robert K Yin (ed), *Introducing the World of Education: A Case Study Reader* (Sage, 2005) xiv:

Starting to understand the world of education means bringing to life what goes on ... and how [this is] connected to a broader panoply of real-life ... Case studies fill this need. They can provide both descriptive richness and analytic insight into people, events, and passions as played out in real-life environments.

¹⁷ Patricia Anne Brown, 'A Review of the Literature on Case Study Research' (2008) 1(1) *Canadian Journal for New Scholars in Education* 1, 6–7, citing Robert Stake, *The Art of Case Study Research* (Sage, 1995):

Stake (1995) believed that the most important role of the case study researcher was that of interpreter. His vision of this role was not as the discoverer of an external reality, but as the builder of a clearer view of the phenomenon under study through explanation and descriptions ... This constructivist position, Stake claimed, 'encourages providing readers with good raw material for their own generalizing' (p.102).

uncomfortable with any continuing assumption that foreign educators could understand what local lawyers needed — sometimes armed only with anecdotal knowledge or experience of other jurisdictions — without careful consultation with local lawyers.

If a realistic picture of the local environment were to be drawn, gathering first-hand information from local lawyers about their experiences seemed essential. Without such a picture it would be difficult for educators to ensure alignment between the legal education provided, and the needs and activities of local lawyers. A case study would help bridge any identified gaps in both academic knowledge of workplace needs and foreign knowledge of local needs. The research would be useful even if no gaps in knowledge or skills were identified; in this case it could give educators confidence in what they were doing. Either way, it would give local lawyers a voice, demonstrate a desire to learn about their experiences, and set a precedent for seeking their views in matters of local legal education.¹⁸ Participation in this research project might encourage local people to write about their own experiences and become more involved in decision-making about local legal education. Including local views might

¹⁸ A number of reports have involved consultation with local people in Solomon Islands and Vanuatu, but have not directly reported their views. In addition, consultations often related to matters other than primary legal education (such as practical legal training, continuing legal education, and aid-funded legal strengthening programs). See Richard Grimes, 'Identifying and Satisfying Needs for Continuing Legal Education in the South Pacific' (1995) 13(2) *Journal of Professional Legal Education* 199; Advantage Management Consultancy, 'Continuing Legal Education in Vanuatu' (June 2009); David Barker, 'University of South Pacific Law School Review' (2005) (held by author); The University of the South Pacific, 'Review Panel Report for the School of Law, Faculty of Arts, Law and Education' (August 2012) (held by author); AusAID, *Stretem Rod Blong Jastis: Vanuatu Law and Justice Partnership Design Document* (Department of Foreign Affairs and Trade, September 2011) Annexure 13, 11 <<https://dfat.gov.au/about-us/publications/Documents/stretem-rod-blong-jastis-design-document.pdf>>. The following includes (summarised) views of government departments: AusAID, 'Delivery Strategy, Solomon Islands Justice Program (SIJP) July 2013 to June 2017' (2013) Attachment 1: Solomon Islands Ministry of Justice and Legal Affairs — Draft Concept Note for RAMSI Transition, v8 July 27th 2012, 47–50, Key Points from each Presentation.

also alert those engaged in education and educational design to the importance of seeking local input.

However, while lawyers would know about their own experiences, it was also necessary to try to understand the larger context or setting within which these experiences took place. For this, data was drawn from whatever sources were available, including documentary sources such as journal articles, newspaper reports, program designs and evaluations, and non-documentary sources such as conference presentations and discussions with others who would have experience of the local environment but who were not study participants, such as personnel of government departments and professional bodies.

i) Defining the Case

A case study is a 'study of a bounded system, emphasising the unity and wholeness of that system, but confining the attention to those aspects that are relevant to the research problem at the time'.¹⁹ Clearly established boundaries are needed so that researchers, participants and readers understand what is and is not included in the unit of study.²⁰ Here the larger, more general subject of South Pacific legal contexts and of lawyers' work within those contexts is confined by its relevance to local legal education.

A case study should fit within a broader category, of which it is one case,²¹ and hence the methodology requires a researcher to answer the question, 'what is this a case

¹⁹ Yin R K, *Case Study Research: Design and Methods* (Sage, 1984), quoted in Punch, above n 14, 120.

²⁰ Punch, above n 14, 124.

²¹ Ibid.

of?'.²² Here the broader category is lawyers' work and legal contexts in the South Pacific, the latter encompassing all those jurisdictions for which the University of the South Pacific (USP) produces law graduates. The present study focuses on one case within that broader category, and that is lawyers' work and the legal contexts of Solomon Islands and Vanuatu.²³ While a larger study incorporating all South Pacific states would be useful, I decided on a narrower focus.²⁴ As already indicated in Chapter One, this focus would make the study more manageable and allow greater depth. I was concerned that the inclusion of more jurisdictions may have flattened the data, requiring a more generalised approach at the expense of a more nuanced and detailed one.²⁵

Further, Pacific Island states are often lumped together when studying or discussing various issues, and studying particular jurisdictions rather than the whole region was an opportunity to tease out some of the peculiarities rather than focusing only on commonalities. While the South Pacific's regional 'personality' may be beneficial in many respects, there are a number of differences in the legal systems and legal sectors of states across the Pacific which it was important to recognise. An initial, focused study (rather than a shallower study of all relevant jurisdictions) would provide new and useful resources, and potentially also provide a prototype for future case studies in other Pacific states.

²² Bruce L Berg and Howard Lune, *Qualitative Research Methods for the Social Sciences* (Pearson, 8th ed, 2012) 326.

²³ Both are studied as one case, discussed later in this section.

²⁴ Given the USP School of Law teaches across 12 jurisdictions within the single classroom, I had initially envisaged researching the needs and opportunities of lawyers in all 12 jurisdictions.

²⁵ Note concern about potential homogenisation caused by a law degree covering a dozen states: C Guy Powles, 'Learning Whose Law? Legal Education in Plural Societies. Choices for the Pacific Island Region' in Commission on Folk Law and Legal Pluralism, *Papers presented to the Congress at Victoria University of Wellington, August 1992* (Law Faculty, Victoria University of Wellington, 1992) 256.

I did, however, choose to include two countries in one case study. Solomon Islands and Vanuatu have similar backgrounds, peoples, languages and legal systems, as well as being geographically proximate.²⁶ From my experiences in Solomon Islands and Vanuatu, having taught students from both countries, having taught in both countries, and having explored the history and contemporary lifestyles of both countries, I decided that the two could appropriately be included in a single case study. I believed that the similarities between the two countries meant they could effectively be studied together, so long as any differences discovered during the study were presented in my results. It also meant that the study could not be dismissed by legal educators as relevant only to one country; studying the two together would give the study broader relevance but without compromising the desired detail.²⁷ Of course, this is not to suggest that the two countries are the same, or that the experiences of lawyers in each country do not deserve to be studied in their own right, only that here it was appropriate to view the two together.

ii) Choosing the Type of Case Study

A number of types of case study, each serving different purposes, are discussed in the literature on research methods and methodology. The two of most relevance to this research are 'intrinsic' and 'instrumental' case studies. Intrinsic case studies are used when the researcher wants a better understanding of the case itself, not merely as representative of the cases within the category, nor intended to illustrate a particular 'trait, characteristic or problem'.²⁸ In an intrinsic case study the aim of the researcher

²⁶ As discussed in the following chapter, Solomon Islands and Vanuatu happen to be two countries as a result of colonial activities and groupings.

²⁷ Notwithstanding the problems noted of lumping a large number of nations and identities together, as USP services many island nations it was important to maintain some regional loci.

²⁸ Berg and Lune, above n 22, 335.

is not to test or to create theory, but instead to understand unique or ordinary aspects of the particular case.²⁹ Instrumental case studies, on the other hand, aim for more generalisable insights.³⁰ In this latter type of case study, the intention is not simply to elaborate the case but to use an understanding of the case to help resolve an external question, issue or problem. The case itself may become of secondary importance, playing only a supportive role in answering the further question.³¹

However, because researchers often have 'multiple interests, there is no solid line drawn between intrinsic and instrumental studies'.³² Between them is a 'zone of combined purpose'³³ and this is where I located the present research. Increased knowledge about the local legal environment is itself valuable, particularly when it includes local experiences, perspectives and voices.³⁴ A locally informed, research-based study would improve understanding of the case, flesh out its features, and possibly challenge assumptions and beliefs formed in the absence of such research. This case study could also prove to be instrumental, however, leading to insights about how legal educational opportunities could be improved for the two countries being studied, or even across the South Pacific as a whole. Nevertheless, the intrinsic value of the case study would remain whether or not such broader insights appeared.

²⁹ Ibid, citing J W Creswell, *Qualitative Inquiry and Research Design: Choosing Among Five Traditions* (Sage, 2nd ed, 2007); R E Stake, 'Case Studies' in N K Denzin and Y S Lincoln (eds), *Handbook of Qualitative Research* (Sage, 2nd ed, 2000) 435.

³⁰ Berg and Lune, above n 22, 335, citing J W Creswell, *Educational Research: Planning, Conducting and Evaluating Quantitative and Qualitative Research* (Merrill Prentice Hall, 2002); and citing R E Stake, 'Case Studies' in N K Denzin and Y S Lincoln (eds), *Handbook of Qualitative Research* (Sage, 1994) 236.

³¹ Berg and Lune, above n 22, 335, citing N K Denzin and Y S Lincoln, *The Sage Handbook of Qualitative Research* (Sage, 3rd ed, 2005).

³² Berg and Lune, above n 22, 335, citing R E Stake, 'Case Studies' in N K Denzin and Y S Lincoln (eds), *Handbook of Qualitative Research* (Sage, 2nd ed, 2000) 435.

³³ Berg and Lune, above n 22, 336, citing R E Stake, 'Case Studies' in N K Denzin and Y S Lincoln (eds), *Handbook of Qualitative Research* (Sage, 1994) 236.

³⁴ Note, however, the dangers cited by Chilisa, above n 3, 214: 'The voices of the researched cease to exist except when cited to illustrate a theme or pattern.'

b) Decolonisation

Having discussed the choice of research methodology it is important also to address concerns about the position of foreign researchers in Indigenous states. Decolonisation literature alerts non-Indigenous researchers to the dangers of creating and perpetuating 'knowledge' about Indigenous matters, based upon and seen from a dominant Euro-Western world view.³⁵ It reminds us that, from an Indigenous perspective, research has often been exploitative, intrusive, and beneficial only to the Western academy and researchers themselves, while dangerous and damaging to Indigenous peoples.³⁶ Melanesian lawyer and author, Bernard Narokobi, wrote of 'experts hired from the so-called developed nations [who] produce findings which confirm our inferiority and inequality'.³⁷ Further, he believes foreign researchers see the world not as a whole but in discrete parts, according to their training:

[They] study Melanesia from one angle or another ... If they are legally minded they will find an absence of courts, constables, codes and kings and conclude Melanesians lived by anarchy and lawlessness. If they are scientifically minded they will find an absence of the wheel, gun powder, city skyscrapers, sprawling suspension bridges, and quickly conclude that Melanesians had no civilisation, no technology, no mathematics and no science. If they are men and women of letters they will find the absence of scrolls or written literature and quickly conclude that Melanesians lived without knowledge, learning or wisdom ... Over the centuries, Melanesians

³⁵ Ibid 34–5: '[K]nowledge production from the interpretive paradigm has been socially constructed using Euro-Western philosophies, cultures, and a long history of application and practice of knowledge production that exclude the worldviews and practices of former colonised societies.'

³⁶ Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed Books, 2nd ed, 2012). See also Norman Denzin, Yvonna Lincoln and Linda Tuhiwai Smith (eds), *Handbook of Critical and Indigenous Methodologies* (Sage, 2008); Norman Denzin and Yvonna Lincoln, 'Introduction: The Discipline and Practice of Qualitative Research' in Norman Denzin and Yvonna Lincoln (eds), *The SAGE Handbook of Qualitative Research* (Sage, 3rd ed, 2008) 1, 3: Qualitative research 'serves as a metaphor for colonial knowledge, for power, and for truth ... Research provides the foundation for reports about and representations of 'the Other.' In the colonial context, research becomes an objective way of representing the dark-skinned Other to the white world.'

³⁷ Bernard Narokobi, *Lo Bilong Yumi Yet: Law and Custom in Melanesia* (Melanesian Institute for Pastoral and Socio-Economic Service and the University of the South Pacific, 1989) 100.

have come to see themselves as they are understood and written up by foreigners. Melanesians are walking in the shadows of their Western analysts, living under dreams and visions dreamt and seen by Westerners ...

For over one hundred years, we have been subjected to microscopic study by Western scientists, scholars, and experts only to emerge second rate ... Every experience of our long history was anthropology or archaeology for drop-out Western scholars seeking the promised land in our environment. To the extent that they fall fascinated, they over-idealise Melanesia. To the extent that they despise Melanesia, they disregard its inherent virtues.³⁸

In addition, we are reminded that Western researchers have created the rules about the production of knowledge and what counts as knowledge, giving Western knowledge the status of truth, while destroying Indigenous knowledge.³⁹ Western knowledge, and the value placed upon it, has been implicated in devaluing alternative forms of knowledge, such that Indigenous or other ways of knowing (epistemologies), ways of being (ontologies) and values (axiologies) have been ignored, denied, derided or destroyed.⁴⁰ As a Western researcher in an Indigenous state, I needed to acknowledge such problems and be sensitive to these concerns.

As a result, I was troubled about how to conduct this research. I had to confront the question of whether it was appropriate for me to conduct such research at all.⁴¹ I decided that even if the research may be better undertaken by a local researcher, it was unlikely that it would be, at least in the short term. As previously discussed, the need for such information had long been identified yet remained unfilled. Meanwhile,

³⁸ Bernard Narokobi, *The Melanesian Way* (Institute of Papua New Guinea Studies and Institute of Pacific Studies (Suva), revised ed, 1983) 8–9.

³⁹ Tuhiwai Smith, above n 36.

⁴⁰ Ibid.

⁴¹ I was tempted numerous times to abandon the project. However, because participants had agreed to take part, given me their time and entrusted me with their ideas, I felt obliged to see this research through and, hopefully, to return something of value to the participants. Value is, of course, for others to judge.

decisions about legal education were being made in the absence of information about the local legal environment and the needs of and opportunities for local lawyers. Without such research, others like me, embedded within and informed by the Western academy and legal profession, would continue to make assumptions about the needs of lawyers in the South Pacific with little contextualised understanding of the matter. We/they would continue to participate in educating local lawyers, but remain informed predominantly by foreign understandings of legal education needs.

On that basis, a pragmatic logic prevailed and I continued with this research while trying as far as possible to be attentive to Indigenous research methodologies, the concerns of decolonisation theorists, and, of course, the needs and wishes of those involved in this research project. I hoped that by listening to local lawyers, and by alerting foreign educators to more of the local context, this work could provide a foundation for more positive outcomes. I acknowledged that these local lawyers' views and experiences would still be seen, understood and presented through the eyes of a Western legal academic, and that the final product would be shaped by my design of the study, the questions I asked, what participants were willing to share, their interpretations of what was relevant, how I then made sense of what they told me, and how I presented that to others.⁴² Hence, it is not expected that such a case study will present *the* true or only possible view of the phenomenon, but hopefully, if done properly, will present *a* valid picture of it. I hoped it would be at least a first step in the right direction that others, including Indigenous educators and researchers, could build

⁴² Denzin and Lincoln, *Collecting and Interpreting Qualitative Materials*, above n 4, 28: note that the researcher

speaks from a particular class, gender, racial, cultural and ethnic community perspective ... approaches the world with a set of ideas, a framework (theory, ontology) that specifies a set of questions (epistemology) that he or she then examines in specific ways (methodology, analysis).

See also Berg and Lune, above n 22, 339–40 on objectivity.

upon.⁴³ It could open a necessary and overdue conversation between local lawyers and legal educators and increase local input into decisions made for local jurisdictions.

Further, I hoped to use my experience to make a longer-term contribution to the South Pacific, and not merely walk away after my academic stint there was completed. I had 20 years' experience as a legal educator, including experience in Indigenous and cross-cultural education. I had postgraduate qualifications in both education and law. I had taught at the University of the South Pacific, had lived in Vanuatu and had travelled frequently to Solomon Islands. As discussed above, I was also attentive to concerns regarding decolonisation, and hoped to be sufficiently aware to explore lawyers' work and the local legal environment sensitively and usefully. It was not my intention to determine the future of legal education for Solomon Islands or Vanuatu, but to contribute to uncovering local experiences and context, provide resources which could help to inform decision-making and practice in legal education, and encourage further interaction between local lawyers and legal educators in the future.

In addition, the outcomes of this research needed to be communicated to a largely foreign audience — law schools and academics responsible for primary legal education in the South Pacific, and donors and NGOs (non-government organisations) who provide continuing and specialised ongoing education for lawyers and others in local jurisdictions. I hoped that my experience within the foreign educational and legal sectors could help me to research and present material in a way that a largely foreign audience would find compelling. While there was undoubtedly much I would not and could not know, I felt competent to uncover useful information regarding the

⁴³ On a more pragmatic note, I felt this kind of work would get more traction with legal educators than anything seriously challenging the overall colonialism of the legal system and legal education.

experiences of lawyers in the local environment, and to communicate it to others. I acknowledged that whatever I did was mediated by the Western world view of a foreign academic, but I tried to remain sensitive to the local context, and endeavoured to ensure that my research activities were appropriate to the environment I was studying.⁴⁴

4. Research Methods

The validity of this research hinges on the quality of the underlying information disclosed by participants, and by documentary sources. From the outset, I was at pains to ensure that both data collection and data analysis were valid, and that any findings I made were not founded on existing Australian or overseas knowledge given a South Pacific shine. During the two years I spent living in Vanuatu, I taught four different core LLB courses, one each at first, second, third and final year levels. In 2012 I returned to work in an Australian law school, but travelled frequently to both Solomon Islands and Vanuatu to maintain contacts, undertake further field research, and twice to coordinate a course in Pacific Island Legal Systems at USP.

In addition, I made a conscious effort to try to distinguish what I knew about legal education from what I was learning about local lawyers' work and the legal context of the South Pacific. While I had access to legal education literature from around the world, I concentrated on that which related directly to the South Pacific, both to inform my own teaching and to ground the research as far as possible in the local context. Even while reading literature relating to the local area it was important to

⁴⁴ Denzin and Lincoln, *Collecting and Interpreting Qualitative Materials*, above n 4, 29: 'Any gaze is always filtered through the lenses of language, gender, social class, race and ethnicity. There are no objective observations, only observations socially situated in the worlds of — and between — the observer and the observed.'

keep in mind that much of this was written by foreigners, who brought to it their own knowledge, experience and world views. Although it was impossible to ‘un-know’ what I had learned in other contexts, being immersed in the local culture and interacting constantly with local people — especially local lawyers and law students — helped me to develop a much deeper understanding of the research topic.

Other research projects undertaken in Melanesia offered insights into appropriate research methods and the nuances of conducting such research, despite most studies having been undertaken by foreigners.⁴⁵ Resources focused specifically on culturally appropriate method and methodology were also helpful. Researchers at the University of Otago had collated a number of Pacific research protocols,⁴⁶ and the Australian Institute of Aboriginal and Torres Strait Islander Studies had written guidelines for ethical research in Indigenous studies.⁴⁷ A Botswanan researcher, Chilisa, had written extensively on Indigenous research methodologies, laying down overall principles for culturally appropriate research with ‘former[ly] colonized, indigenous peoples and historically oppressed groups’.⁴⁸ Drawing on a broad body of earlier literature, Chilisa discussed the need for researchers in this area to be guided by what she called ‘the four Rs’: responsibility, respect, reciprocity and rights of those researched.⁴⁹ Tuhiwai Smith, having expounded on the damage done to Indigenous peoples by Western

⁴⁵ See, eg, Miranda Forsyth, *A Bird that Flies with Two Wings: The Kastom and State Justice Systems in Vanuatu* (PhD Thesis, Australian National University, 2007), especially ‘Methodology’; Michelle L Redman-MacLaren et al, ‘Co-Interviewing Across Gender and Culture: Expanding Qualitative Research Methods in Melanesia’ (2014) 14 *BMC Public Health* 922 (co-written and researched by Australian and Melanesian researchers).

⁴⁶ J Bennett et al (eds), *Pacific Research Protocols* (University of Otago, 2011), since reprinted as J Bennett et al, ‘Pacific Research Protocols from the University of Otago’ (2013) 25(1) *The Contemporary Pacific* 95.

⁴⁷ Australian Institute of Aboriginal and Torres Strait Islander Studies, ‘Guidelines for Ethical Research in Australian Indigenous Studies’ (2012). Note these are the guidelines used by ANU for those researching with Indigenous peoples.

⁴⁸ Chilisa, above n 3, 7.

⁴⁹ Ibid.

researchers, also described a number of research approaches which may help to further the decolonising project.⁵⁰

While these authors are renowned for their work on Indigenous and decolonising methods and methodology more broadly, I wanted to look at research methods and methodology in a more local context.⁵¹ There are protocols published by the Vanuatu Cultural Centre available for the conduct of cultural research in Vanuatu:

The Researcher will: a) Recognize the rights of people being studied, including the right not to be studied, to privacy, to anonymity, and to confidentiality; b) Recognize the primary right of informants and suppliers of data and materials to the knowledge and use of that information and material, and respect traditional copyrights, which always remain with the local community; c) Assume a responsibility to make the subjects in research fully aware of their rights and the nature of the research and their involvement in it; d) Respect local customs and values and carry out research in a manner consistent with these; e) Contribute to the interests of the local community in whatever ways possible so as to maximize the return to the community for their cooperation in their research work; f) Recognize their continuing obligations to the local community after the completion of field work, including returning materials as desired and providing support and continuing concern.⁵²

I could not find any broader discussion of research methods or methodology written by Solomon Islanders or Ni-Vanuatu. However, Vallance, an Australian researcher working extensively in Papua New Guinea, had described what he claimed to be a Melanesian research methodology, which relied not on a researcher's ethnicity but on respect for Melanesian values and world view, and integration of those within the

⁵⁰ Tuhiwai Smith, above n 36. For examples of these methods see discussion of representation: at 150, reframing: at 153, and sharing: at 161.

⁵¹ See also Chilisa, above n 3, 160–1 on importance of understanding people within their own context, inevitably influenced by their cultural, political and historical contexts.

⁵² Vanuatu Kuljoral Senta, *Vanuatu Cultural Research Policy* (Vanuatu Cultural Centre, March 2013) <<http://vanuatuculturalcentre.vu/wp-content/uploads/2013/03/Vanuatu-Research-Policy1.pdf>>.

research process.⁵³ Solomon Islanders and Ni-Vanuatu are also Melanesian so Vallance's work should be applicable.

Vallance's view on the conduct of research, set out below, accorded with but went further than the protocols of the Vanuatu Cultural Centre. According to Vallance, while 'informed consent' may be sufficient for ethics clearance, genuinely ethical research goes well beyond that.⁵⁴ A researcher would need to respect the Melanesian social context, which requires particular attention to community, collaboration, compassion and courage. Based on the communal nature of Melanesian society, ethical research would inform the community, seek permission from the community, and include community perspectives in data collection and analysis. Collaboration would involve participants reflecting on the data and helping to make sense of it, and sharing in its dissemination. Compassion would bridge the gap from researcher as voyeur, distanced from the scene and thus dislocated from much of its meaning, to researcher who, likely through immersion and prolonged fieldwork, develops compassion for and empathy with the participants and the research subject. Finally, courage enables a researcher to acknowledge that he or she does not have all the answers: 'it is easy to report only that which is well understood and under analytical control, while it is risky to report gaps or places where understanding is incomplete'.⁵⁵

According to Vallance, research adhering to these principles will be more valid in a Melanesian context and, importantly, will acknowledge the contribution of participants and their part in the generation, collection and documentation of their

⁵³ Roger J Vallance, 'Is There a Melanesian Research Methodology?' (2007) 7(11) *Contemporary PNG Studies* 1.

⁵⁴ Roger J Vallance, 'Melanesian Research Ethics' (2008) 8(5) *Contemporary PNG Studies* 1.

⁵⁵ Ibid.

knowledge.⁵⁶ Such research gives a 'clear and authentic voice' to Melanesian perspectives, and may 'empower more Melanesians to enter the discourse of research'.⁵⁷ The need to encourage and make space for Indigenous researchers has been a frequent refrain.⁵⁸

This research project built as far as possible on the research principles espoused above. In hindsight, however, I would like to have ensured greater local involvement at the very first step.⁵⁹ Ideally, local participants would have been closely involved in the initial research design, and not just at the stage of seeking permissions, data collection, and post facto reflection and interpretation. I did not seek enough local involvement initially due to the urgency I felt to start gathering information for use in my own teaching practice; my overwhelming workload at USP; a lack of funding to support additional researchers; insufficient personal experience in this type of research to be responsible for others; and because I was enrolled in a higher degree which I understood required me to be solely responsible for the research design. In future research, I would ensure greater levels of local participation from the very start.

At a more formal level, I sought and received, from the Governments of Solomon Islands and Vanuatu, permission to undertake the research, and met all formal

⁵⁶ Vallance, 'Is There a Melanesian Research Methodology?', above n 53. Note that the use of such principles may also benefit research well beyond Melanesia, particularly on topics which have historically been the 'subject' of foreigners' research and documentation. See also Ralph Reganvanu, 'Afterword: Vanuatu Perspectives on Research' (1999) 70 *Oceania* 98. Note that in Vanuatu a great deal of attention has been paid to training Indigenous researchers and ensuring ethical, culturally appropriate and collaborative cultural research. The Vanuatu Cultural Centre Fieldworker Network commenced in the 1980s and is coordinated by the Vanuatu Cultural Centre, which provides infrastructure to encourage and facilitate Ni-Vanuatu research. See Dale Tryon, 'Ni-Vanuatu Research and Researchers' (1999) 70 *Oceania* 9.

⁵⁷ Vallance, 'Is There a Melanesian Research Methodology?', above n 53.

⁵⁸ See, eg, Chilisa, above n 3; Tuhiwai Smith, above n 36.

⁵⁹ See also the reflections of Rebecca Monson in 'Participatory Research on Land Issues in Solomon Islands' (April 2010) Issues 1.2 and 2.1 *eJournal of the Australian Association for the Advancement of Pacific Studies* <<http://intersections.anu.edu.au/pacificcurrents/monson.htm>>.

university ethics requirements, including gaining prior ethics approval, providing participants with information sheets and contact details, ensuring written consent, and storing materials appropriately.⁶⁰

a) Data Collection⁶¹

It seemed that those in the best position to provide information about the topic — the work of local lawyers and the context in which it occurred — were lawyers themselves, those who employed or supervised lawyers, and those who worked closely with lawyers. To understand local lawyers' educational needs, I was keen to bring out the participants' own views rather than test a predetermined theory. In addition, I did not want to begin with a deficit perspective where I tried to work out what was wrong, what were the gaps, or what was missing. I tried to begin with a more positive focus.

Face-to-face interviews were chosen as the most appropriate method of eliciting participants' views, mostly with individual participants but occasionally with two or three participants where they preferred that.⁶² In addition, two participants I could not meet in person answered questions via email. Interviews generally ran for between one and one and a half hours, but sometimes ran longer. We often began by talking about people, events or activities we were both familiar with, to establish common ground. The personal and unhurried nature of interviews allowed me to build more of a relationship with participants in accordance with guidelines for research in

⁶⁰ As I was a staff member at USP I sought approval from USP Faculty of Arts and Law in accord with USP protocols (no USP Ethics Committee had been convened at that time), and as an ANU student I also sought ethics approval from ANU. Ethics Protocol: ANU 2012/263: Legal Education in the South Pacific.

⁶¹ The use of the term 'data' can itself be problematic, suggesting a tendency to view experiences and perspectives independently of those to whom they belong. However, because 'data' is a term commonly used in explaining research processes, the term is used in this chapter.

⁶² Although I would have preferred individual interviews to avoid participants being influenced by one another, individuality is often seen as a 'Western preoccupation' (see Chilisa, above n 3, 204). In fact, I found that participants interviewed together did speak as individuals, and often expressed quite different views from one another.

Melanesian communities mentioned above. Through this personal interaction, and the often lively discussions which ensued, I was able to demonstrate my interest in the participants' worlds and experiences, and in participants individually, not merely as data sources.

Interviews also gave participants a chance to question me about my involvement in the Pacific, my motives and the research process itself. They enabled clarification of any uncertainties, for both myself and for participants. As well as providing clarification, face-to-face interviews allowed me to delve more deeply into areas in which it appeared participants had some specific knowledge or interest. While initially semi-structured, interviews were also flexible, allowing conversation to evolve instead of, or in addition to, a question and answer format. I took handwritten notes in all interviews and often read sentences or paragraphs back to participants to ensure that my notes coincided with what they had said, or indeed had meant. I chose this method as I was concerned that an electronic recording device would put a distance between us and make the interview more formal. Hand-writing also forced me to listen carefully to participants, and I found it enabled me to engage with what they were saying immediately and directly.⁶³

⁶³ I find with recorded interviews there is a tendency to 'tune-out' from time to time, knowing that the words can be listened to later. Note also the use of handwriting in interviews in Miranda Forsyth's study, *A Bird that Flies with Two Wings: The Kastom and State Justice Systems in Vanuatu*:

Tape recorded interviews were often difficult to understand on replaying as there were so many background noises (roosters, dogs, children etc) and because often ni-Vanuatu speak softly when discussing important issues. Generally writing notes at the time of the interview was the preferred recording method, as this ensured that what had been said was accurately captured and enabled the respondent to be asked to repeat points that were unclear.

Forsyth, above n 45, 66 n 53.

Participants were recruited through personal contacts, through distribution of information via local legal networks,⁶⁴ and through introductions from existing participants.⁶⁵ A broad range of participants was identified using these methods. However, as the research progressed, I began to target particular individuals or groups who I felt would have additional insight. For example, if some participants had knowledge only of their specific job, I tried to recruit more participants whose roles or experience would give them a broader overview, such as employers or supervisors. Later I targeted more junior lawyers who were closer in time to their primary legal education, and could tell me more about how they learned to be lawyers.

Interviews covered a number of topics.⁶⁶ While the following 'list' appears quite formal and linear, in fact interviews were informal, with both researcher and participants asking and answering questions, and engaging in more wide-ranging conversation. I ensured the following topics were covered by the end of the interview, but not necessarily in this order.

Firstly, personal information was requested about the participant and his or her employment. This information was needed to ensure that participants were drawn from a broad cross-section of the legal community, and that no one group was overly represented. This also allowed me to check whether observations were generalised across participants, or whether they were particular to specific groups, for example, government lawyers or recent graduates.

⁶⁴ I asked the Vanuatu Law Society, the Solomon Islands Bar Association, South Pacific Lawyers Association and Pacific Islands Law Officers' Network to pass on information, as well as attending a number of conferences and meetings to make contact with potential participants.

⁶⁵ Known as the 'snowball' technique. Berg and Lune, above n 22, 52; Chilisa, above n 3, 169.

⁶⁶ The basic questions guiding initial interviews are included as Appendix 1. Note that these were continually refined during the project.

Secondly, participants were asked in detail about the work they undertook, the extent to which they had the required competencies for the work, and where or how they had developed them. If they reported needing further competencies, they were asked whether (and if so, where) they had opportunities for further learning or training. Those who supervised or employed other lawyers were asked the same questions in regard to their juniors also.

Thirdly, participants were asked to move away from their own experiences and to talk about the work of South Pacific lawyers more generally, and about the knowledge and competencies which would be needed by lawyers in local jurisdictions.⁶⁷ They were also asked to identify the most important thing for a lawyer to know, understand or be able to do, as this required participants to focus on the essentials and to prioritise amongst the various matters they had previously mentioned.

Finally, participants were asked to comment on the USP's recently identified LLB program learning outcomes. Although, as discussed above, conversations were fluid and did not hold to a pre-determined order or format, this part was always left until last. I wanted to avoid confining or directing participants' responses by presenting them with the Law School's existing articulation of what was important. Thus, it was only after the bulk of each interview was completed that I presented participants with the list of program learning outcomes. This list encouraged participants to turn their minds to current practice in legal education, and brought to their attention knowledge, skills or attitudes they may not have thought of earlier in the interview. In fact, after seeing the program learning outcomes already articulated by others, participants often

⁶⁷ Initially I had asked about knowledge and competencies which would be needed by lawyers in local jurisdictions and not elsewhere, but I very quickly moved away from the comparative aspect, realising that only those who also had experience of other jurisdictions would be able to discuss those matters.

claimed one or more of these outcomes to be very important or even essential, despite having omitted it/them earlier. In addition, being presented with a list of outcomes seemed to prompt new trains of thought, which sometimes led participants to offer further information and to express altogether new ideas.

b) Participant Overview

i) Participant Profiles

Eighty participants took part in this study. Seventy-eight of those were interviewed in person, while two provided written responses to interview questions. Of the 80 participants, 56 were initially from the Pacific Islands (referred to as 'local'), while 24 came from outside the region (referred to as 'foreign').

Table 1. Origin of participants

Local participants	56
Foreign participants	24
Total participants	80

Local Participants

Local participants included 34 working in Solomon Islands and 22 working in Vanuatu. Two participants were originally from other Pacific Island countries, but are included as local participants as their understanding of legal systems and lawyers' needs in this environment are likely to be closer to those from Solomon Islands and Vanuatu than to other foreign participants in the study.

Table 2. Countries of work — local participants

Solomon Islands	34
Vanuatu	22
Total local participants	56

Foreign Participants

Foreign participants came from Australia, New Zealand, North America, Africa, Europe and Britain. Five of the 24 foreign participants were working in Solomon Islands at the time of interview, while 17 worked in Vanuatu. This is partly explained by the fact that USP's School of Law is in Vanuatu, so foreign academics were naturally interviewed there. It is important to note, however, that many of the foreign participants had worked in both Solomon Islands and Vanuatu, and that many had worked in a variety of other countries including numerous other South Pacific countries (most commonly Papua New Guinea or Fiji, but also Cook Islands, Samoa and Tuvalu). Participants additionally reported having worked with Indigenous communities outside the South Pacific, in rural and remote areas, and with immigrant and minority communities. As a result, foreign participants had a number of points of comparison including a variety of work types in numerous jurisdictions.

Table 3. Countries of current work and previous experience — foreign participants

Solomon Islands	5
Vanuatu	17
Other	2
Total foreign participants	24
Experienced in more than one Pacific Island jurisdiction	13/24

Academic Background

In this study, those with degrees in law are called 'lawyers'. Sixty-nine of the 80 participants had degrees in law, including 46 of the local participants and 23 of the foreigners. The 11 participants who had not studied law worked closely with the legal fraternity, in courts, government, NGOs or statutory offices. Of the 69 participants with law degrees, 44 had graduated from local universities. Among local participants

with LLB degrees, 42 law degrees were from USP, 2 were from University of Papua New Guinea (UPNG), and 2 were from New Zealand. No foreigners held LLB degrees from local universities, but some held or were studying toward postgraduate qualifications from USP. Local participants held postgraduate degrees from both local and overseas universities, and a number were enrolled in postgraduate study at the time of interview.

Table 4. Location of university studies

USP/UPNG LLB	44
Overseas LLB	25
USP/UPNG postgraduate degrees (local participants)	3
Overseas postgraduate degrees (local participants)	3

Length of Experience

There was a marked difference in the length of legal experience between local participants and foreign participants.⁶⁸ While local participants were predominantly more junior lawyers, foreigners tended to have had considerable experience. The foreigners' greater experience is explained to some extent by the fact that it is their experience which gives them access to legal roles in the South Pacific, in capacity building, academic or senior advisory roles, or as solicitors or advocates. The more limited experience of local participants may be explained by the recent expansion in the number of lawyers trained in the region, and the fact that, having had a connection with USP, it was easier for me to contact more recent local graduates.

⁶⁸ Data on length of experience was not available for three participants.

Table 5. Length of experience

	Local lawyers	Foreign lawyers
Less than 5 years	33	2
5–10 years	5	3
Over 10 years	5	18
Unknown	3	–

ii) Participants' Work Experience

Participants' Roles — All Participants

Participants' roles were varied and diverse but could best be grouped as:

- a) Government employees, and consultants to government, members of parliament and parliamentary committees. These participants were involved in work focused directly on government matters such as advising and supporting government and members of parliament, legislative drafting, policy development and law reform. In addition, public sector lawyers undertook litigation and transactional work on behalf of government and members of parliament.
- b) Senior government, judicial and statutory officers, such as politicians, judges and auditors, and lawyers for regulators and ombudsman offices.
- c) Lawyers in public practice, such as those working as prosecutors in criminal matters or as public solicitors (known as legal aid lawyers in some jurisdictions) mainly defending criminal cases and occasionally advising on or litigating civil matters.
- d) Lawyers in private practice, most commonly general practitioners undertaking a broad range of work including contract, conveyancing, family, employment and

maritime law, and civil and commercial litigation. These participants ranged from sole practitioners through to employees and partners of larger local and ‘foreign’ or ‘expat’ firms, as well as corporate in-house lawyers.

- e) Lawyers working for NGOs such as Transparency International, the United Nations Development Program and the World Bank — either within the organisations themselves or placed by them with local agencies — and aid workers involved in policy development, capacity building, project coordination and infrastructure development.
- f) Researchers, academics and other educators.

As a number of participants worked across more than one role, the sum of participants in each category is greater than the total number of participants.

Table 6. Participants’ roles— all participants

Government — direct government work	18
Government — public lawyer	31
Private practice	23
Researchers, academics, other educators	12
Aid, capacity building and NGO	25
Government, judicial or statutory officer	7 ⁶⁹

Participant’s Roles – Local Participants

Local participants worked in public and private sectors, in NGOs, as academics, in high-level government, judicial or statutory offices, and in donor-funded capacity-building roles. Ten local participants did not have legal training but worked very closely with lawyers in government, courts, NGOs or other law-related offices. Some local

⁶⁹ For both local and foreign participants in this category, specific roles are not mentioned to protect confidentiality.

participants have more than one role, hence, the total number below is greater than the number of local participants.

Table 7. Participants' roles — local participants

	Total	Lawyer	Non-lawyer
Government— direct government work	14	11	3
Government — public lawyer	21	21	–
Private practice	13	13	–
Researchers, academics, other educators	4	4	–
Aid, capacity building and NGO	12	7	5
Government, judicial or statutory officer	5	3	2

Participants' Roles – Foreign Participants

Foreign participants worked in most of the same areas in which local participants worked: public and private sectors, NGOs, as academics, in courts, and in donor-funded capacity-building roles. Two foreign participants held high-level government, judicial or statutory offices. Many foreign participants undertook more than one role, whether simultaneously or consecutively. Most commonly, doubling up of roles occurred amongst aid workers, who often did both capacity building and 'in-line' work. As a result, the numbers below add up to more than the number of foreign participants but reflect the areas in which participants are likely to have an understanding of local lawyers' needs, rather than merely recording their current job titles. Amongst the 24 foreign participants, 23 had legal training and only one did not.

Table 8. Participants' roles — foreign participants

Government— direct government work	4
Government — public lawyer ⁷⁰	10
Private practice	10
Researchers, academics and other educators	8
Aid, capacity building and NGO	13
Government, judicial or statutory officer	2

In addition to interviews, documentary data was also gathered from, for example, the South Pacific Lawyers Association, the Pacific Islands Law Officers' Network (PILON), aid agencies and local news reports. My own observations of lawyers' practice, court proceedings, legal meetings and conferences, and conversations with other knowledgeable local people⁷¹ in both Solomon Islands and Vanuatu rounded out what I heard in interviews and read in documents.

c) Data Analysis

For this project, an analysis which enabled themes to emerge from the data itself was particularly important and appropriate. As discussed earlier, I did not want this study to be confined (any more than necessary) by my prior knowledge, experience and understanding — that of a foreign researcher, most familiar with foreign law in a foreign university. Nor did I want it to be confined by broader literature on the educational needs of lawyers which had been written in and for other environments without reference to the local context. I was cognisant of the danger that 'a detailed substantive review of the literature in advance ... can strongly influence us when we

⁷⁰ Most commonly working for Office of Director of Public Prosecutions or Public Solicitor's Office (equivalent to a legal aid lawyer in many jurisdictions).

⁷¹ Such as heads of government departments and office holders in legal professional bodies.

begin working with the data',⁷² and I wanted to approach the analysis 'as open-mindedly as possible, guided [only] by the research questions'.⁷³

Working directly from the data was thus my best chance of engaging with the material unencumbered (or at least less encumbered) by the restrictions of my own background and by non-contextualised literature on legal education. I therefore chose a general inductive approach for analysis of data. While such an approach has commonly been used to make sense of qualitative research data, it has not always been labelled as such.⁷⁴ Researchers using inductive analysis 'build their patterns, categories and themes from the bottom up ... working back and forth between the themes and the data' until a comprehensive set of themes has been established.⁷⁵ Hence, without being bound to preconceived hypotheses, theories or models, ideas can emerge from the researcher's immersion in the data.⁷⁶

When using an inductive analysis in qualitative research the various stages are often not discrete. Hence, data collection, data analysis and even writing up may occur side by side, and repeatedly. The various steps commonly identified with this approach, such as collecting, organising, reading and coding or categorising data, drawing out themes and creating descriptions, interrelating themes and descriptions, and

⁷² Punch, above n 14, 133–4.

⁷³ Ibid 133.

⁷⁴ David R Thomas, 'A General Inductive Approach for Analyzing Qualitative Evaluation Data' (2006) 27 *American Journal of Evaluation* 238.

⁷⁵ Creswell, *Research Design: Qualitative, Quantitative and Mixed Methods Approaches*, above n 3, 175.

⁷⁶ Thomas, above n 74, 238. Note also that much of the research process I used was consistent with and is often found in grounded theory research. However, I do not use the term 'grounded theory' as it aims for the creation of theory as its endpoint. I did, however, use similar techniques for data collection and analysis to ensure that my research outcomes were 'grounded' in the data itself.

interpreting meanings, occur iteratively.⁷⁷ The stages are interrelated and may occur in different orders at different times.

Using this approach, the first steps in analysis can occur while data is still being collected. I collected and began to analyse a small quantity of data to generate early ideas, which then helped to guide further data collection and analysis. Having conducted about 20 interviews, I presented preliminary findings to the Law and Culture Conference held at USP's School of Law in Vanuatu.⁷⁸ This challenged me to make sense of the early data, to articulate my findings in an orderly manner, to present the project and the data to those to whom it would be most relevant, and to gather their feedback. This enabled a stock take of the project so far, and audience comments — including comments from academics, students and graduates of the Law School — helped me to determine the next stage of the project.

After almost 60 interviews, I circulated a preliminary draft of the findings to all participants for their feedback. Participants were assured that their further comments would be valuable in a more-detailed analysis of the data, and would help to shape the ongoing project. Participants were asked for their thoughts on the work generally, whether they felt that it captured their ideas, and whether they thought there was anything missing or incorrect. They were also asked for any new thoughts or insights they would like to add after reading the paper.

⁷⁷ Creswell, *Research Design: Qualitative, Quantitative and Mixed Methods Approaches*, above n 3, 186.

⁷⁸ An annual conference run by the Law School of the University of the South Pacific, in conjunction with one or more New Zealand universities. This presentation occurred in 2011.

Having taken account of feedback I undertook further interviews, stopping the fieldwork after 80 interviews when most responses seemed to be confirming or repeating the views of earlier participants and few new ideas were emerging.

Data from all interviews and from participant feedback was analysed and organised as fully as possible before bringing in relevant documentary data. Because much of the latter was written by foreigners, I did not want to be overly influenced by their observations of lawyers' needs before I was confident that I had a good understanding of the data collected directly from participants. Hence, documents were used as further data to be fed into the analysis only after conceptual directions had been determined from the interview data itself.

I then undertook extensive documentary research to broaden my understanding of the topic. This was particularly important in providing historical context, without which today's local legal environment could not be understood. In addition to historical context, documentary sources also helped to flesh out many aspects of the contemporary legal environment, the importance of which had been signalled in analysis of the interviews with participants.

d) Writing Up

Case studies are often written up with data, analysis and discussion fully integrated with one another. I had noted, however, as discussed previously, that literature related to South Pacific legal education often omitted reference to local perspectives, or included them only in summary fashion. This made it difficult for readers to distinguish the views of local people themselves from those of the writers, who were generally foreign. As a result, in writing up this research, I was keen to ensure that local voices,

perspectives and experiences were highly visible. I was also keen that the work could give rise to practical outcomes, and hence would meet the needs of legal educators.

Consequently, I have tried in writing up this work to:

- give precedence to local participants' contributions, by keeping their contributions identifiable and by presenting them first where possible, before bringing in data derived from foreign participants and documentary sources;
- present the data more directly, in the hope that this might enable and encourage readers themselves to use the data to generate additional or alternative ideas, less encumbered by my interpretations; and
- organise the findings in a way which might be more familiar to and useful for legal educators.

5. Conclusion

This research project has been conducted within a constructivist interpretive research paradigm, which seeks to understand and interpret rather than to prove or transform. Within that paradigm, a case study methodology has been used, with inductive analysis applied to the data. This entire approach has been chosen specifically for this project.

In the light of both historical and ongoing concerns, I have tried to marry research activities which are culturally affirming and appropriate to Melanesian peoples with techniques accepted by the Western academy as rigorous and reliable. At the broadest level, by using a constructivist interpretive paradigm I have acknowledged that there are many ways of knowing, and that my aim is to offer *an* interpretation, not *the* interpretation, of the topic at hand. By seeking the ongoing participation of local

people, and by relying so heavily on their views in this project, I hope I have acknowledged, and not repeated, the disrespect afforded them by past researchers, and the frequent denial and devaluing of their knowledge, experience and perspectives.

I have aimed to build rapport with and demonstrate respect toward participants by seeking permission to carry out the work, by meeting participants personally, by keeping participants informed of progress, by sharing developments, and by inviting further feedback from time to time. In conducting the research and in analysis I have tried to understand and engage as openly as possible with the views and perspectives of local participants. By drawing on both empirical and documentary data I have tried to present the experiences of participants against the broader backdrop of the local environment, and to acknowledge their experiences as part of, and belonging to, the larger context.

On the other hand, I have remained alert to the requirements of research within the Western academy, and to the need for this work to be communicated to and accepted by those schooled in that environment. I hope that the project's design, and the way it has been conducted and reported, will be seen as a genuine attempt to find and apply valid, balanced and appropriate research methods and methodology.

Given the complex and contested nature of conducting such research, I have included reflections on this process in the conclusion to this thesis.

CHAPTER THREE: THE DEVELOPMENT OF SOUTH PACIFIC LAW

1. Introduction

This chapter serves to orient the reader to the laws and legal systems of Solomon Islands and Vanuatu, and to the broader environments of these states. Beginning with an historical overview, it traces the development of laws and legal systems from traditional arrangements, through early contact, the colonial period and into Independence. While the history is a great deal more complex than what follows, and historical accounts are not uniform, this section aims to sketch the terrain relevant to the topic, rather than to engage with the detail of sometimes contested accounts. Some knowledge of this history and development is essential to any understanding of the contemporary environment and current legal educational needs, as even now many traditional and colonial arrangements remain in place and continue to impact upon the legal environment. I begin with a caveat; the authors of most of the sources used in this chapter are foreign, and so their perspective of this history is likely to differ markedly from local perspectives. Unfortunately, the latter are rarely accessible in documentary form.¹

This chapter also briefly discusses aspects of the history and contemporary environments of Australia and New Zealand, and differentiates these from the situation of local states. This is particularly important as many of those involved in

¹ See Bagele Chilisa, *Indigenous Research Methodologies* (Sage, 2012) 59, for discussion of such situations where the available literature is written by outsiders and 'the literature by the colonized Other is predominantly oral'. See also a rare written history by local people: Hugh Laracy (ed), *Ples Blong lumi: Solomon Islands, the Past Four Thousand Years* (USP Institute of Pacific studies, 1989); and see Peter Hemptenstall, 'My Place: Finding a Voice within Pacific Colonial Studies' in Brij V Lal (ed), *Pacific Island Histories: Journeys and Transformations* (Journal of Pacific History, 1992) 60.

South Pacific legal education are drawn from Australia, New Zealand and other states more similar to those, and may be unfamiliar with some of the differences between their own and local states.

2. The Pre-Colonial Period

Although it is common to describe this area as the Pacific, the South Pacific, the Pacific Islands or the Pacific Region, such simple descriptions make it easy to overlook the fact that we are not referring to one group of people, one history, one culture or one society. Indeed, South Pacific Islanders are generally of Melanesian, Polynesian, Micronesian or mixed racial backgrounds, and within each of these larger groups there are many different cultural, social and linguistic groupings.² Throughout history there have been occasions of both physical or cultural isolation, and of interaction between and within various groups.³ The result has been the development of multiple diverse groupings even within small geographical areas.⁴ Hence, 'Pacific societies, taken together, are characterized by diversity — and individually by complexity'.⁵ In Melanesia especially, local diversity may be illustrated by language use; even today

² While 'racial background' is commonly used to describe/differentiate various groups in the South Pacific, the author acknowledges that 'race' itself is a contested concept. See especially Roger M Keesing, 'Definitions of People and Place' in R J May and Hank Nelson (eds), *Melanesia, Beyond Diversity* (Research School of Pacific Studies, ANU Canberra, 1982) Vol 1, 3, 3–5. Note also discussion of 'Indigenous' communities in Donald Denoon, Philippa Mein Smith and Marivic Wyndham, *A History of Australia, New Zealand and the Pacific* (Blackwell Publishing, 2000) 38–40. More recently non-Indigenous peoples, and particularly Japanese, Indian, Chinese and European, have also mixed with Indigenous peoples in the South Pacific.

³ See Jack Golson, 'Prehistoric Movement and Mapping' in R J May and Hank Nelson (eds), *Melanesia, Beyond Diversity* (Research School of Pacific Studies, Australian National University, 1982) Vol 1, 17; Lawrence Foanaota, 'Social Change' in Hugh Laracy (ed), *Ples Blong Lumi: Solomon Islands, the Past Four Thousand Years* (USP Institute of Pacific Studies, 1989) 68, 68–9.

⁴ See, eg, Roger M Keesing, 'Traditional Enclaves in Melanesia' in R J May and Hank Nelson (eds), *Melanesia, Beyond Diversity* (Research School of Pacific Studies, Australian National University, 1982) Vol 1, 39, 40–1.

⁵ Guy Powles, 'Law, Courts and Legal Services in Pacific Societies' in Guy Powles and Mere Pulea (eds), *Pacific Courts and Legal Systems* (USP Institute of Pacific Studies, 1988) 6, 8; Yash Ghai, 'Constitution Making and Decolonisation' in Yash Ghai (ed), *Law, Politics and Government in the Pacific Island States* (USP Institute of Pacific Studies, 1988) 1, 2–3.

there are 117 living languages used in Vanuatu, and 71 in Solomon Islands.⁶ This diversity went well beyond language, leading one historian to explain the difficulty of writing Melanesian history thus: 'the multiplicity of Melanesian communities are too obscure historically, and none of them coalesced into noticeable socio-political units in the 19th century.'⁷

The notion of sovereign 'nation states' in the South Pacific is a relatively recent construct. The current geographical or territorial groupings were initially created as part of colonisation, with statehood being introduced to enable the move to independence.⁸ Before this external involvement, 'unified societies' or 'unified states' of the type now recognised did not exist here.⁹ Separate groups lived with the governance of their own leaders or chiefs, with their own community practices, and subject to their own unwritten 'laws' and customs.

In the course of ordering their lives over centuries, the peoples of the islands of the Pacific developed a variety of social systems suited to their needs. Techniques of social control were employed in such areas as kinship relations and leadership; in the administration of residential groups, villages and islands; in the management of land, food and other resources; and in the maintenance of order and the settlement of disputes.¹⁰

⁶ M Paul Lewis, Gary F Simons and Charles D Fennig (eds), *Ethnologue: Languages of the World* (SIL International, 19th ed, 2016). Online version: <<https://www.ethnologue.com/statistics/country>>. These figures are a 'total count of living languages used as a first language in that country'. For further discussion of language diversity in Melanesia, see D C Laycock, 'Melanesian Linguistic Diversity: A Melanesian Choice?' in R J May and Hank Nelson (eds), *Melanesia, Beyond Diversity* (Research School of Pacific Studies, Australian National University, 1982) Vol 1, 34.

⁷ I C Campbell, 'Constructing General Histories' in Brij V Lal (ed), *Pacific Island Histories: Journeys and Transformations* (Journal of Pacific History, 1992) 46, 57.

⁸ Bernard Narokobi, *Lo Bilong Yumi Yet: Law and Custom in Melanesia* (Melanesian Institute for Pastoral and Socio-Economic Service and the University of the South Pacific, 1989) 76. See also Denoon, Mein Smith and Wyndham, above n 2, 30–34.

⁹ Narokobi, above n 8.

¹⁰ C G Powles, 'Law, Decision Making and Legal Services in Pacific Island States' (Paper presented at Development Studies Centre Seminar — The Island States of the Pacific and Indian Oceans: Anatomy of Development, Faculty of Law, Monash University, 1979) 1.

Law was not a concept isolated from other aspects of life. Instead, it was 'an integral part of the whole way in which people go about undertaking various tasks in the community';¹¹ not a 'phenomenon which controls society, but ... part of a cognitive knowledge of a community'.¹² When conflicts arise in such communities 'the emphasis centres not on the law or the rule or the norm, but how to meet and settle the conflict, with the emphasis on recognising differences and the best mode to resolve any particular conflict'.¹³ Hence, while 'law' emanating from the state (as legal positivists saw it) may not have existed, there was nonetheless leadership, social order, discipline and control.¹⁴

Traditional communities were not static. They were disrupted from time to time by internal disputes, outside influences, or by natural occurrences, which gradually led to local change and development.¹⁵ Thus even racially homogenous and geographically close groups often developed slightly, or very, differently over time. While each community had clear social order, the way of doing things varied from community to community.¹⁶

In Melanesia generally, which includes both Solomon Islands and Vanuatu, leadership was acquired in one or more of three main ways: through hereditary chieftainship and investiture; through prowess in war, giving feasts, public debate, age or wisdom; or

¹¹ Narokobi, above n 8, 4.

¹² Ibid 25.

¹³ Ibid 4.

¹⁴ See also Sam Alasia, 'Politics' in Hugh Laracy (ed), *Ples Blong lumi: Solomon Islands, the Past Four Thousand Years* (USP Institute of Pacific Studies, 1989) 137, 139: 'In our traditional societies ... there existed established forms of government concerned with maintaining unity and peace and law and order, but not to the extent we have today.'

¹⁵ Denoon, Mein Smith and Wyndham, above n 2, 42–48.

¹⁶ Ibid. See also Miranda Forsyth, *A Bird that Flies with Two Wings: Kastom and State Justice Systems in Vanuatu* (ANU EPress, 2009) Chapter 3 for a survey of traditional leadership practices in Vanuatu.

through appointment by others, elected or otherwise.¹⁷ Leaders did not make 'law' as such but rather gave 'wise counsel', and knowledge of what should and should not be done was transmitted via the meeting house (one for men and one for women).¹⁸ Thus 'law' in the sense of something issuing from a central power and certain or settled was unknown, yet constraints existed, social order was maintained, and disputes were resolved within and between Pacific Island communities.

However, great variations in custom could be found even within one island,¹⁹ and across Melanesia more generally. This diversity may be illustrated using the islands now known as Vanuatu. In the northern islands, chiefs became chiefs through a 'public graded system' requiring the amassing of wealth, and the use of that wealth to perform rituals to gain influence and power.²⁰ In the southern and central islands, partly hereditary and partly elective leadership systems were used,²¹ but tempered by requirements of competence, such that an hereditary chief would only be given the power he was capable of exercising.²² More broadly, across Melanesia, authority and

¹⁷ Narokobi, above n 8, 24.

¹⁸ Ibid.

¹⁹ Jennifer Corrin and Don Paterson, *Introduction to South Pacific Law* (Palgrave Macmillan, 3rd ed, 2011) 40.

²⁰ Miranda Forsyth, 'Leadership Structures and Dispute Management Systems in Vanuatu from First Contact to Independence' (2007) 30 *Journal of Pacific Studies* 63, 65; see also reference to disruptions to the graded systems wrought by the introduction of material goods, and the behaviour of returning plantation labour: Robert Tonkinson, 'Vanuatu Values: A Changing Symbiosis' in R J May and Hank Nelson (eds), *Melanesia, Beyond Diversity* (Research School of Pacific Studies, Australian National University, 1982) Vol 1, 73, 80.

²¹ Forsyth, 'Leadership Structures and Dispute Management Systems in Vanuatu from First Contact to Independence', above n 20, 65–8.

²² Forsyth, 'Leadership Structures and Dispute Management Systems in Vanuatu from First Contact to Independence', above n 20, 68; and for a study of hierarchy in three different areas of Vanuatu (Shepard Islands, Northern Malekula and Tanna) see also Jean Guiart, 'Land Tenure and Hierarchies in Eastern Melanesia' (1996) 9(1) *Pacific Studies* 1.

status was based more on achievement than ascription, and chiefs could be removed from leadership if they lost the respect of their community.²³

There were also differences in how power was used. It is thought that generally there were reasonably high levels of participation in decision-making processes, and even paramount chiefs rarely issued orders without consultation with lesser chiefs and elders.²⁴ But the amount of participation may have varied markedly, with some decisions made in consultation with communities, and others by chiefs alone. It appears that while chiefs 'tended to consult local opinion ... often they were more autocratic than democratic in their behaviour'.²⁵

While the ability to generalise about leadership practices has been disputed,²⁶ what appears clear is that there was considerable diversity. Hence, while it may be possible to speak of 'typical' Melanesian, Polynesian and Micronesian — or even Pacific Island — customs, it is clear that typical does not equate to 'uniform'. Many and varied 'traditional' governance practices existed across the islands of the Pacific, and were probably more numerous and more diverse in Melanesia than in other areas of the South Pacific.²⁷

²³ Morgan Wairiu, 'Governance and Livelihood Realities in Solomon Islands' in Stewart Firth (ed), *Globalisation and Governance in the Pacific islands. State, Society and Governance in Melanesia: Studies in State and Society in the Pacific, No. 1*, (ANU Press, 2006) 409; Narokobi, above n 8, 23–5; Ghai, 'Constitution Making and Decolonisation', above n 5, 3.

²⁴ Narokobi, above n 8, 35. See also John Ipo, 'Land and Economy' in Hugh Laracy (ed), *Ples Blong lumi: Solomon Islands, the Past Four Thousand Years* (USP Institute of Pacific Studies, 1989) 121, 123.

²⁵ William Rodman, 'The Law of the State and State of the Law in Vanuatu' in Lockwood et al (eds), *Contemporary Pacific Societies: Studies in Development and Change* (Prentice Hall, 1993) 60–1, quoted in Forsyth, 'Leadership Structures and Dispute Management Systems in Vanuatu from First Contact to Independence', above n 20, 66.

²⁶ See, eg, Bronwen Douglas, 'Rank, Power, Authority: A Reassessment of Traditional Leadership in South Pacific Societies' (1979) 14(1) *Journal of Pacific History* 2.

²⁷ Ghai, 'Constitution Making and Decolonisation', above n 5, 3; Campbell, 'Constructing General Histories', above n 7; Corrin and Paterson, above n 19.

European contact then influenced further change and development in this already diverse region. In Vanuatu, for example, whalers and traders stopped in from time to time at various islands, followed by sandalwooders, plantation labour recruiters (better known as 'blackbirders'²⁸), settlers and missionaries.²⁹ Some simply came and went, others built more permanent stores and camps. Some settled, taking over land and developing farms or plantations. With each visit or series of visits, local communities were exposed more and more to outside influences.³⁰ The islands of the Solomons group were likewise visited by explorers and traders, 'blackbirders' and missionaries. In addition, a ready supply of guns brought in by Europeans led to 'an escalation in, and increased deaths from, local blood feuding'.³¹ Numerous traders and missionaries were also killed by local people in retaliation against the Europeans' labour recruitment practices.³²

Great changes were also occurring due to the massive depopulation of many Pacific islands,³³ a result of, amongst other things, local communities being exposed to introduced European diseases.³⁴ The death of many older men is believed to have

²⁸ For further information see 'Blackbirding' and 'Labour on Overseas Plantations' in Clive Moore, *Solomon Islands Historical Encyclopaedia 1893–1978*, (University of Queensland, 2nd ed, 2016) <<http://www.solomonencyclopaedia.net/index.html>>.

²⁹ I C Campbell, *Worlds Apart: A History of the Pacific Islands* (Canterbury University Press, 2nd ed, 2011) Chapters 7–9; Matt K Matsuda, *Pacific Worlds: A History of Seas, Peoples, and Cultures* (Cambridge University Press, 2012) Chapter 15; and see also Deryck Scarr, *A History of the Pacific Islands: Passages through Tropical Time* (Taylor and Francis, 2001).

³⁰ Campbell, *Worlds Apart: A History of the Pacific Islands*, above n 29.

³¹ Kenneth Brown, *Reconciling Customary Law and Received Law in Melanesia: The Post-Independence Experience in Solomon Islands and Vanuatu* (Charles Darwin University Press, 2005) 27.

³² *Ibid.*

³³ Campbell, *Worlds Apart: A History of the Pacific Islands*, above n 29, 118–19, 184–9.

³⁴ Denoon, Mein Smith and Wyndham, above n 2, refer to many differing estimates of sizes and causes of population losses at this time. See especially Chapter 4 'Depopulation and Immigration' 72, 72–4.

resulted in 'the loss of enormous amounts of traditional knowledge,'³⁵ a loss which would itself have changed social structures and customs. 'Blackbirding' further changed social structures and customs by bringing outsiders to the islands, by taking local people away, and by then returning those who had been exposed to foreigners and who had lived in foreign lands.³⁶ One local author suggests that by 'introducing large numbers of Solomon Islanders to the world and way of life and ideas and goods of the *araikwao* [white men] the labour trade probably exerted a more profound influence on Solomon Islands life and society than any other single episode in our history'.³⁷ The return of this recruited labour also had a heavy impact on language development, the effects of which are still apparent in the widespread use of Solomon Islands' Pijin and Vanuatu's Bislama.³⁸

Missionary intervention also hastened change, both physically, by encouraging local people to settle around a central mission,³⁹ and culturally, by introducing Christian beliefs and discouraging paganism.⁴⁰ Status within the missions became an additional or alternative basis of leadership which further disrupted traditional leadership practices. In fact, some latter day 'chiefly' structures in the Pacific are thought to have

³⁵ Bernard Deacon, *Malekula: A Vanishing People in the New Hebrides* (Routledge & Sons, 1934) xviii–xix, cited in Forsyth, 'Leadership Structures and Dispute Management Systems in Vanuatu from First Contact to Independence', above n 20, 64.

³⁶ Campbell, *Worlds Apart: A History of the Pacific Islands*, above n 29, Chapter 7; Tonkinson, above n 20, 80.

³⁷ Sam Alasia, 'Population Movement' in Hugh Laracy (ed), *Ples Blong lumi: Solomon Islands, the Past Four Thousand Years* (USP Institute of Pacific Studies, 1989) 112, 115.

³⁸ D T Tryon, 'The Solomon Islands and Vanuatu: Varying Responses to Diversity' in R J May and Hank Nelson (eds), *Melanesia, Beyond Diversity* (Research School of Pacific Studies, Australian National University, 1982) Vol 1, 273. Although both languages are to a great degree the lingua franca of their respective nations, colonial attitudes have denigrated both. In Vanuatu, for example, Bislama has been 'regarded simply as a dreadful corruption of English, unworthy even to serve as a language of Evangelism': at 276. See also discussion of attitudes to Solomon Islands Pijin: at 274.

³⁹ Forsyth, *A Bird that Flies with Two Wings*, above n 16, 61.

⁴⁰ Campbell, *Worlds Apart: A History of the Pacific Islands*, above n 29, Chapter 8.

less grounding in Indigenous tradition than in a mission's or coloniser's bestowal of power on a particular individual they could work with.⁴¹

Evidently, even before becoming a protectorate, in the case of Solomon Islands, and a condominium, in the case of the New Hebrides (now Vanuatu), major changes had occurred in parts of these territories which had already disrupted and changed traditional ways of life and local custom.

None of the visitors — traders, settlers, labour recruiters or missionaries — had authority over local communities, and traditional (although increasingly changing) leadership practices continued, with *kastom* used to retain order and to avoid — and where necessary, settle — disputes. Likewise, local leaders had no recognised authority over the foreigners, and thus had little means of protecting their own people, land and customs against exploitative and unregulated behaviour.⁴²

Both to control their own subjects in foreign territories, and to 'secure the interests of commerce, settlement and church', European powers wanted political control of these territories in their own hands.⁴³ Thus, in the second half of the 19th century, European powers increased their formal influence over the South Pacific, with many South Pacific islands and peoples becoming subject to external laws.⁴⁴ All current University of the South Pacific (USP) member countries except Tonga⁴⁵ came under another country's control at some point, whether as colonies, protectorates, or mandated or

⁴¹ Forsyth, *A Bird that Flies with Two Wings*, above n 16, 69–70.

⁴² At least in certain islands of Vanuatu, rights to interact with outsiders were restricted: Denoon, Mein Smith and Wyndham, above n 2, 46–7.

⁴³ Campbell, *Worlds Apart: A History of the Pacific Islands*, above n 29, 166.

⁴⁴ Denoon, Mein Smith and Wyndham, above n 2, Chapter 9.

⁴⁵ Tonga remained under the leadership of the King of Tonga and subject to the Tongan Constitution, but not entirely independent. Corrin and Paterson describe Tonga as an example of 'more limited and indirect' control, with the country 'considered to be a protected state': Corrin and Paterson, above n 19, 2.

trust territories.⁴⁶ Islands within the Solomons group were 'proclaimed, acquired or declared' parts of the Solomon Islands (British) Protectorate between 1893 and 1900,⁴⁷ while the islands of the New Hebrides, which became Vanuatu upon Independence, were formally administered by a French and British condominium from 1906 forward.⁴⁸

3. The Colonial Period

As part of European powers assuming 'control', foreign law was received into or imposed upon the colonies and protectorates 'so far as circumstances admit'.⁴⁹ The 'substance of the law for the time being in force in England' and, later, the 'statutes of general application in force in England' up to a specified date were applied to the islands of the Solomons group.⁵⁰ In the New Hebrides, the same were applied to British Nationals⁵¹ and optants, while French law applied to French nationals and optants.⁵² Over time, legislation more targeted to the colonies and protectorates became more common, either made by foreign powers to apply locally, or made locally under delegation from foreign powers. Meanwhile, *kastom* was retained by local communities, and given authority to varying degrees even in institutions of the colonising powers. Local courts, for example, were expressly authorised to apply

⁴⁶ Corrin and Paterson, above n 19, 2.

⁴⁷ Brown, above n 31. It has also been suggested that in the case of the Solomons Group, its declaration as a protectorate was intended to stop French encroachment here. Ipo, above n 24, 125.

⁴⁸ Brown, above n 31, 29.

⁴⁹ *Pacific Order in Council 1893* (UK), *Western Pacific (Courts) Order 1961* (UK), cited in Corrin and Paterson, above n 19, 18.

⁵⁰ *Pacific Order in Council 1893* (UK) s 20, *Western Pacific (Courts) Order 1961* (UK) s 15, cited in Corrin and Paterson, above n 19, 17.

⁵¹ *High Court of New Hebrides Regulations 1976* extended the cut-off date, cited in Corrin and Paterson, above n 19, 17.

⁵² Under their agreement, British Law governed British nationals and other foreigners who opted to be covered by it, while French law covered French nationals and other foreigners who opted to be covered by it. 'Optants' were those who 'opted' to be covered by one or the other: Corrin and Paterson, above n 19, 36.

‘native customs’ to the local Indigenous populations⁵³ in Solomon Islands⁵⁴ and the New Hebrides.⁵⁵ In other colonies *kastom* was retained to varying degrees, for example, where it was ‘not inconsistent with the written laws’,⁵⁶ or where foreign law was expressed to apply ‘but not so as to deprive a person of the benefits that he or she would receive under custom’.⁵⁷

Over the first half of the 20th century, written local laws became more prevalent and some level of self-government was introduced to many South Pacific islands.⁵⁸ In Solomon Islands, a system of local government and local representation on a national Legislative Assembly was established in the 1960s,⁵⁹ and five different constitutions were created between 1960 and 1974, establishing and broadening self-governance in the protectorate.⁶⁰ With the need for agreement between Britain and France, transfer of power in the New Hebrides was slower, with internal self-government occurring in 1978,⁶¹ and provincial governments established in 1980⁶² as part of an independence agreement.⁶³

By the late 20th century, all USP member South Pacific countries had regained formal independence from foreign powers. Written constitutions were enacted for each

⁵³ Corrin and Paterson, above n 19, 3.

⁵⁴ *Native Courts Ordinance 1942* (UK) (legislation for Solomon Islands).

⁵⁵ *Protocol Respecting the New Hebrides between the Governments of United Kingdom and France*, 1914, art 8.

⁵⁶ See, eg, *Laws Repeal and Adopting Ordinance 1922–36* (Nauru), cited in Corrin and Paterson, above n 19, 3.

⁵⁷ See, eg, *Island Courts Ordinance 1965* (Gilbert and Ellice Islands), (which are now Kiribati and Tuvalu respectively), cited in Corrin and Paterson, above n 19, 3.

⁵⁸ Corrin and Paterson, above n 19, 3–4.

⁵⁹ Brown, above n 31, 28.

⁶⁰ Corrin and Paterson, above n 19, 4.

⁶¹ Brown, above n 31, 30.

⁶² *Decentralisation Act 1980* (Vanuatu), cited in Brown, above n 31, 29.

⁶³ Ghai, ‘Constitution Making and Decolonisation’, above n 5, 31.

nation, either by the departing foreign powers or by the new nation itself.⁶⁴ Written constitutions became the 'supreme law' of the Pacific Island states, with some constitutions specifically recognising custom/*kastom* as part of the law of the land. It should be noted, however, that while written constitutions were *stated* to be supreme,

in a number of Island states, the power of chiefs [remains] a significant factor in daily life, and has important implications for government and law. In other states ... there are different sources of power, and in no state does one expect to find that all such sources are defined in the Constitution.⁶⁵

Thus, at the time of formal independence, most Pacific Island states had in force a constitution made for or by the country itself, as well as the common law and rules of equity developed by courts of colonising nations, along with the legislation of those nations made prior to specific 'cut-off dates', as far as applicable to the colony. They also had laws made specifically for them by those colonising nations, and laws made locally under the authority of those powers. In addition, local *kastom* took precedence, or was otherwise to be taken into account, in some matters. The result is that 'each Pacific state and territory now presents a politico-legal tapestry woven in sharply contrasting threads. The number of different colours may depend on the diversity of Indigenous cultures ... compounded by the diversity of imposed systems'.⁶⁶

From the above it appears that many South Pacific islands had somewhat similar experiences in terms of colonisation and the development of their state legal systems. However, their varied pre-colonial histories and traditions, along with varied colonial

⁶⁴ Corrin and Paterson, above n 19, 4–5.

⁶⁵ Powles, 'Law, Decision Making and Legal Services in Pacific Island States', above n 10, 5.

⁶⁶ Guy Powles, 'Law, Courts and Legal Services in Pacific Societies' in Guy Powles and Mere Pulea (eds), *Pacific Courts and Legal Systems* (USP Institute of Pacific Studies, 1988) 7.

experiences, have left these states with differing and distinct legal environments.⁶⁷ In fact, in many Pacific islands local organisation remained paramount even during the colonial era. Introduced law often failed to spread into isolated regions, and, as a result, some areas retained their traditional autonomy and were able to devise 'techniques for subverting the authority of the centre, whether that centre be under colonial administration or independent government'.⁶⁸ So the experience of colonisation varied not only between states, but also somewhat within or across states. In particular, less accessible areas with more subsistence economies tended to retain their traditional organisation, while urban or readily accessible areas, especially those involved in the money economy, were likely to have been more changed by the colonial experience.

4. Arrangements Following Independence

Upon gaining formal independence as Solomon Islands in 1978 and Vanuatu in 1980, both states adopted Westminster styles of government and opted broadly for the continuation of 'existing' legal systems.⁶⁹ Independence constitutions specified the

⁶⁷ As mentioned previously, there appears to have been much greater variation in Melanesian customs, while differences were less marked in the Micronesian and Polynesian countries: Campbell, *Worlds Apart: A History of the Pacific Islands*, above n 29, 13; Campbell, 'Constructing General Histories', above n 7; Corrin and Paterson, above n 19, 40.

⁶⁸ Powles, 'Law, Decision Making and Legal Services in Pacific Island States', above n 10, 5.

⁶⁹ Yash Ghai, 'Systems of Government I' in Yash Ghai (ed), *Law, Politics and Government in the Pacific Island States* (USP Institute of Pacific Studies, 1988) 54, 57. But note also Ghai's comment that the 'classification of systems of government is frequently a formalistic and arid exercise which contributes little to the understanding of the dynamics of a system'. Hence, while the systems are classified as 'Westminster', each has distinctive characteristics, and operates differently according to local conditions. See also Denoon, Mein Smith and Wyndham, above n 2, who note the difficulty of Westminster practices where the political party process is frail, resulting in 'ad hoc lobbying groups without ideology, discipline or binding loyalty', 393, citing Peter Larmour (ed), *Solomon Islands Politics* (USP Institute of Pacific Studies, 1983). In contrast to Solomon Islands, and characterised as 'something rare in Melanesia', the government of the newly independent Vanuatu was 'a party with grassroots organization, a national vision and an explicit (and mildly socialist) agenda': at 398.

application of laws in the new nations, including laws based on those of the previous colonisers, and those based on local custom/*kastom*.⁷⁰

The constitution of Solomon Islands included the following in relation to application of law:

s75.-(1) Parliament shall make provision for the application of laws, including customary laws. (2) ... Parliament shall have particular regard to the customs, values and aspirations of the people of Solomon Islands.

s76. Until Parliament makes other provision ... the provisions of Schedule 3 ... shall have effect for the purpose of determining the operation in Solomon Islands:-

- (a) of certain Acts of the Parliament of the United Kingdom mentioned therein;
- (b) of the principles and rules of the common law and equity;
- (c) of customary law; and
- (d) of the legal doctrine of judicial precedent.

SCHEDULE 3

1. Subject to this Constitution and to any Act of Parliament, the Acts of the Parliament of the United Kingdom of general application and in force on 1st January 1961 shall have effect as part of the law of Solomon Islands ... with such changes ... as may be necessary to facilitate their application to the circumstances of Solomon Islands from time to time.

⁷⁰ Denoon et al note that in Solomon Islands '[i]ntellectuals often sought to revive tradition (or *kastom*) as a basis for national unity ...' (Denoon, Mein Smith and Wyndham, above n 2, 431) while Tonkinson notes that in Vanuatu, the leaders of the independence movement saw the 'vital need for the development of a distinctive national identity and a raised political consciousness concerning the weight of colonial oppression and paternalism'. The leaders chose '*kastom*, that body of distinctive, non-European "traditional" cultural elements, as the focus in their quest for a national identity to underpin the independence movement' (Tonkinson, above n 20, 84–5). Keesing also refers to the use of *kastom* and tradition as political symbols allowing local people to reassert their own identities. In such cases, tradition or *kastom* was juxtaposed against colonial, whether or not the practice in question was entirely Indigenous or pre-colonial (Keesing, 'Traditional Enclaves in Melanesia', above n 4). See also the discussion regarding the creation or invention of tradition versus 'real' tradition: Stephanie Lawson, 'The Tyranny of Tradition: Critical Reflections on Nationalist Narratives in the South Pacific' in Tom Otto and Nicholas Thomas (eds), *Narratives of Nation in the South Pacific* (Harwood Academic Publishers, 1997).

2.- (1) Subject to this paragraph, the principles and rules of the common law and equity shall have effect as part of the law of Solomon Islands, save in so far as: -

(a) they are inconsistent with this Constitution or any Act of Parliament;

(b) they are inapplicable to or inappropriate in the circumstances of Solomon Islands from time to time; or

(c) in their application to any particular matter, they are inconsistent with customary law applying in respect of that matter.

(2) The principles and rules of the common law and equity shall so have effect notwithstanding any revision of them by any Act of the Parliament of the United Kingdom which does not have effect as part of the law of Solomon Islands.

3.- (1) Subject to this paragraph, customary law shall have effect as part of the law of Solomon Islands.

(2) The preceding subparagraph shall not apply in respect of any customary law that is, and to the extent that it is, inconsistent with this Constitution or an Act of Parliament.

(3) An Act of Parliament may: -

(a) provide for the proof and pleading of customary law for any purpose;

(b) regulate the manner in which or the purposes for which customary law may be recognised; and

(c) provide for the resolution of conflicts of customary law.

4.- (1) No court of Solomon Islands shall be bound by any decision of a foreign court given on or after 7th July 1978.

Similar provisions regarding the application of laws are found in the constitution of Vanuatu:

95. (1) Until otherwise provided by Parliament, all Joint Regulations and subsidiary legislation ... in force immediately before the Day of Independence shall continue in operation ... and shall be construed with such adaptations as may be necessary to bring them into conformity with the Constitution.

(2) Until otherwise provided by Parliament, the British and French laws in force or applied in Vanuatu immediately before the Day of Independence shall ... continue to apply to the extent that they are not expressly revoked or incompatible with the independent status of Vanuatu and wherever possible taking due account of custom.

(3) Customary law shall continue to have effect as part of the law of the Republic of Vanuatu.

In addition, the constitution of Vanuatu provided a new role for custom chiefs:

29. (1) The National Council of Chiefs shall be composed of custom chiefs elected by their peers sitting in District Councils of Chiefs.

30. (1) The National Council of Chiefs has a general competence to discuss all matters relating to custom and tradition and may make recommendations for the preservation and promotion of ni-Vanuatu culture and languages.

(2) The Council may be consulted on any question, particularly any question relating to tradition and custom, in connection with any bill before Parliament.

31. Parliament shall by law provide for the organisation of the National Council of Chiefs and in particular for the role of chiefs at the village, island and district level.

As the constitutions of Solomon Islands and Vanuatu demonstrate, these states have systems of law which recognise to varying extents both state law and local custom or *kastom*. In practice, state law and *kastom* will sometimes be viewed or applied independently, sometimes in concert, or sometimes even in conflict. State law may be used to endorse *kastom* decisions, or to avoid them. *Kastom* itself may be uniform

across a jurisdiction, or may vary widely. In addition, the reach of the laws may also be such that some people could live under one or the other only, although in the same state.

In some countries, the lives of people in urban areas or of non-Indigenous origins may be governed by laws which have little impact on the rest of the citizens, and vice versa. It may be possible in larger societies to change — or escape — from one subsystem of laws to another by physically moving, as from village to town.⁷¹

The very essence of *kastom* and introduced law are also likely to be different from one another. For example, introduced law,

insists on treating every citizen as an isolated individual, possessing rights and obligations, with whom the government will deal direct. The citizen alone is responsible for his actions ... This is in conflict with, and destructive of, the approach taken in those local and land courts which are encouraged to step in to stop trouble as soon as it begins, to deal with whole families and wider groups, and to try to reach the underlying causes of the disputes ... [Introduced law] designed for the cash economy and individualist values undermines the effectiveness of local tradition.⁷²

Further, while most South Pacific jurisdictions function at least partially under colonial-based legal systems, it cannot be assumed that colonial ways of thinking about law have been either absorbed or accepted. Most Pacific societies were previously ordered around status, where a person was considered in terms of who he or she was (descent, group, kinship affiliations and sometimes rank) rather than what he or she did,⁷³ and this has not been thrown aside with the advent of introduced law. Rather, both introduced law and local custom/*kastom* must be taken into account in the current legal environments of Solomon Islands and Vanuatu.

⁷¹ Powles, 'Law, Courts and Legal Services in Pacific Societies', above n 66, 18–19.

⁷² Ibid 24.

⁷³ Powles, 'Law, Courts and Legal Services in Pacific Societies', above n 10, 3.

This can present particular problems for Pacific Islanders, who are required to act within introduced frameworks but also within local or traditional frameworks. For example,

Wealth and chiefly status operate outside the [introduced] framework and tend to interfere with it. The smaller the state the less opportunity there is for the constitutional office holders and institutions to perform in the manner intended by the law, and reasonably free from those outside pressures ... Politicians, officials and professionals and other businessmen are bound by ties of kinship and loyalty. The law relating to these office holders and institutions is, of course, introduced law, and it may be ineffectual unless it coincides with traditional thinking ...⁷⁴

It can be seen from the above that law in the Pacific Islands, and in particular in Solomon Islands and Vanuatu, is drawn from numerous disparate sources, including *kastom*. In addition, much of the population of each state still lives predominantly according to traditional arrangements, irrespective of *kastom's* constitutional recognition in law or governance. This continuing importance of traditional *kastom* and culture across these states, and as part of state law, is an important point of distinction between these jurisdictions, on the one hand, and other former colonies such as Australia and New Zealand, on the other. This is not to suggest there is not continuing Indigenous culture or *kastom* in Australia or New Zealand, but that there its place has had less effect on the broader society, and on the introduced legal system. There are many other distinctions which also impact upon the legal environments of each state, and these are discussed below.

⁷⁴ Ibid 6.

5. Contrasting Australia, New Zealand and the South Pacific

While the above has focused on the South Pacific, understanding may be helped by a brief comparison with Australia and New Zealand. This is especially pertinent as the majority of law teachers and legal advisors in the South Pacific are drawn from Australia and New Zealand and may be aware of these jurisdictions' similarities, but not their differences. In addition, the latter jurisdictions are more likely to be familiar to educators and advisers from more similar states, such as the USA, Britain and Europe.

Australia and New Zealand share at least superficial similarities with many South Pacific states. They are geographically close, and are island nations which had and continue to have Indigenous populations. They were colonised by the British (and French in the case of Vanuatu). They have written constitutions and, after gaining formal independence, they retained introduced legal systems which combine introduced and locally-made written laws, and the principles of British common law and equity. As a result,

[a]t first sight, one might be forgiven for concluding that the legal system is broadly the same in the countries of the region as it is in England or in Commonwealth countries on the Pacific rim. The hierarchy of the courts, the reliance on, or cross-referencing to, non-indigenous rules (particularly court procedures) and the general terminology used, can lead the uninitiated to this conclusion. Both law, procedure and customary rules and practices can, however, be starkly different, albeit under a veneer of familiar style and legalese.⁷⁵

⁷⁵ Richard Grimes, 'Culture, Custom and the Clinic — A Model for Legal Education in the South Pacific' (1998) 24(1) *Monash University Law Review* 38, 46.

There are also other significant differences in the broader context within which these laws and legal systems operate, and which differentiate Solomon Islands and Vanuatu from states such as Australia and New Zealand.

Australia and New Zealand are highly developed,⁷⁶ economically independent, and yet closely integrated within the broader international community.⁷⁷ They have high levels of formal education, well-developed transport and communications infrastructure, large and well-resourced law enforcement and court systems, and long-term political stability. Across the Pacific Islands — to varying degrees — we find the opposite. Five of USP's member countries, including both Solomon Islands and Vanuatu, are listed by the UN as 'least developed nations'.⁷⁸ Violent ethnic tensions and systemic corruption have not been uncommon.⁷⁹ Most of these countries are highly dependent on overseas aid, and many are still working to stabilise and embed their post-independence governance and legal systems.

⁷⁶ As in capitalist and materialist, not as in 'civilised'.

⁷⁷ It is perhaps an oxymoron to say a state is both economically independent and highly integrated within the international order. Both Australia and New Zealand are economically independent as far as a state can be within the globalised world.

⁷⁸ United Nations Committee for Development Policy, Department of Economic and Social Affairs, *List of Least Developed Countries* (United Nations, June 2017) <https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/ldc_list.pdf>.

⁷⁹ For example, in Solomon Islands, 'the "ethnic tension" crisis of 1998–2003, which nearly destroyed the country, killed at least 200 persons, and adversely affected many thousands more': Solomon Islands Truth and Reconciliation Commission, 'Confronting the Truth for a Better Solomon Islands' (Final Report, February 2012); 'a five-year civil conflict (1998–2003) which left 30,000 people displaced and hundreds unaccounted for': Catherine Wilson, 'Post-Conflict Trauma Haunts Solomon Islands', *InterPressService News Agency* (online), 29 April 2013 <<http://www.ipsnews.net/2013/04/post-conflict-trauma-haunts-solomon-islands/>>.

For example, in Vanuatu: 'Vanuatu's Great Council of Chiefs will meet next week to discuss ways to prevent a repeat of deadly riots that led to a state of emergency being declared this week. Three people have died since Saturday, when riots broke out between residents from two islands ... "We need to see how we can manage it. To stop the whole thing from happening again in Vanuatu is impossible," he said.': 'Vanuatu chiefs to meet over riots', *The Sydney Morning Herald* (online), 6 March 2007 <<http://www.smh.com.au/news/World/Vanuatu-chiefs-to-meet-over-riots/2007/03/06/1173156495493.html>>.

Re corruption see Peter Larmour, 'Culture and Corruption in the Pacific Islands: Some Conceptual Issues and Findings from Studies of National Integrity Systems' (Discussion Paper, Asia Pacific School of Economics and Government, Australian National University, 2006); Peter Larmour, *Interpreting Corruption: Culture and Politics in the Pacific Islands* (University of Hawaii Press, 2012).

Australia and New Zealand have long been highly urbanised. By 2016, 90% of Australia's residents were estimated to live in urban areas, with 86% of New Zealand's residents also living in urban areas.⁸⁰ In both countries, high urban populations over an extended period of time, and high proportions of each population being drawn from the same introduced culture as state law and governance systems, have meant a relatively easy spread of centralised power and formal law into a large proportion of the country. In contrast, while Pacific Island nations are currently experiencing rapid urbanisation, even now only about a quarter of the population of Solomon Islands and Vanuatu live in urban areas.⁸¹ Lack of transport and communications infrastructure, and minimal state services both create and allow continued isolation of many communities from the centralised systems of governance and law.

In addition, the proportion of each state's population which is Indigenous varies greatly. Indigenous Australians are estimated to make up around 3% of the Australian population;⁸² in New Zealand, Maori total about 15% of the population.⁸³ In contrast, most Pacific Island states are predominantly Indigenous,⁸⁴ and where large non-

⁸⁰ *Urban Population (% of Total)*, The World Bank
<<https://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS>>.

⁸¹ Ibid. According to this report Vanuatu's urban population in 2016 was 26%, and Solomon Islands' urban population 23%.

⁸² Australian Bureau of Statistics, '2016 Census shows growing Aboriginal and Torres Strait Islander population' (Media Release, 075/2017, 27 June 2017)
<<http://www.abs.gov.au/ausstats/abs@.nsf/MediaReleasesByCatalogue/02D50FAA9987D6B7CA25814800087E03?OpenDocument>>.

⁸³ *Indigenous Peoples in Aotearoa (New Zealand)* (2015) International Work Group for Indigenous Affairs
<<http://www.iwgia.org/regions/oceaniapacific/aotearoa-new-zealand>>.

⁸⁴ Solomon Islands — Melanesian 95.3%, Polynesian 3.1%, Micronesian 1.2%, other 0.3% (2009 est): *The World FactBook — Australia-Oceania: Solomon Islands* (27 July 2017) Central Intelligence Agency
<<https://www.cia.gov/library/publications/the-world-factbook/geos/bp.html>>; Vanuatu — Ni-Vanuatu 97.6%, part Ni-Vanuatu 1.1%, other 1.3% (2009 est): *The World FactBook — Australia-Oceania: Vanuatu* (27 July 2017) Central Intelligence Agency
<<https://www.cia.gov/library/publications/the-world-factbook/geos/nh.html>>.

Indigenous populations are found, they are not generally from Anglo countries. Thus, for the greater part of Pacific Islands society, English common law is entirely foreign.

This is true also of the institutions of government and ideas of governance — the ‘Westminster’ system of government, the concept of separation of powers and the ideal of the rule of law — which developed in Britain and were then transported to the colonies. In the case of Australia and New Zealand, it was largely the British people who came to the colonies who then administered the institutions, promoted the ideas, and governed and were governed by them. In contrast, in the Pacific Islands, because these ideals and institutions were not developed by Pacific Islanders and did not result from their history and culture, they are unlikely to have the same kind of acceptance or ownership by the (predominantly Indigenous) Pacific Island societies as they have in the (predominantly non-Indigenous) Australian or New Zealand societies.⁸⁵

Further, while there are increasing calls for the recognition and application of alternative or additional sources of law in Australia and New Zealand — from both Indigenous and immigrant communities — this is occurring in societies with strong and solidly entrenched formal laws and institutions. Solomon Islands and Vanuatu, on the other hand, are still in the process of nation building and working to create unified states which include their many different islands and communities. Even the notion of sovereign ‘states’ is a recent and foreign construct for most Pacific Islanders, imposed from outside rather than developed from within.⁸⁶ This differs greatly from the experiences of Australia and New Zealand, where the ‘state’ continues to be controlled

⁸⁵ See John Henderson, ‘Governance and Constitutional Issues: Reflections on Current Problems and Future Options’ in Michael Powles (ed), *Pacific Futures* (Pandanus Books, 2006) 10; Teresia Teaiwa and Malakai Koloamatangi, ‘Democracy and its Prospects in the Pacific’ in Michael Powles (ed), *Pacific Futures* (Pandanus Books, 2006) 20.

⁸⁶ Narokobi, above n 8, 76.

by descendants of the colonisers, and not by local Indigenous populations.⁸⁷ While in Australia and New Zealand traditional Indigenous ways of life continue in places, in Solomon Islands and Vanuatu they remain the most common way of life for the majority of the population.

6. Conclusion

This chapter has sketched the development of local laws and legal systems through traditional, contact, colonial and then independence periods. While this is only a sketch, it provides a basis for understanding contemporary laws and legal systems of the South Pacific, and of Solomon Islands and Vanuatu in particular.

To sum up, statehood itself, centralised government and a state legal system are all recent additions to Solomon Islands and Vanuatu, and conceptually different to traditional arrangements. In both countries, the centralised state had and still has limited reach; large parts of both countries remain isolated from the centre, organised around villages with their own chiefs, *kastom* and languages. Traditional forms of governance and law, or *kastom*, continue alongside introduced ones; further, both states have explicitly chosen to keep a place for this. In Solomon Islands, the constitution requires parliament to have ‘particular regard to the customs, values and aspirations of the people of Solomon Islands.’ In Vanuatu, the Malvatumauri⁸⁸ Council of Chiefs, created to bridge the gap between traditional governance systems and the

⁸⁷ States such as Australia and New Zealand are sometimes referred to as ‘settler’ states. ‘Both colonialism and settler colonialism are premised on exogenous domination, but only settler colonialism seeks to replace the original population of the colonized territory with a new society of settlers.’: Tate A LeFevre, ‘Settler Colonialism’ (29 May 2015) *Oxford Bibliographies* <<http://www.oxfordbibliographies.com/view/document/obo-9780199766567/obo-9780199766567-0125.xml>>.

⁸⁸ Name added by *Constitution (Sixth) (Amendment) Act 2013* (Vanuatu) s 10(a).

new state, may discuss all matters relating to land,⁸⁹ tradition and custom, and has a constitutional right to be consulted over these ‘in connection with any bill before parliament’.⁹⁰ It is necessary to understand and appreciate this amalgam of traditional and introduced concepts, institutions and actors, as it continues to impact upon the contemporary legal environment.

It is also essential to be aware that despite superficial similarities, there are stark differences between the legal environments of predominantly Indigenous states such as Solomon Islands and Vanuatu on the one hand, and predominantly non-Indigenous states like Australia and New Zealand on the other. This is especially important to note as many of those involved in local legal education may be more familiar with the latter, or with states similar to the latter, than with the former. These very real differences in law and legal systems, and in the broader environment within which law operates, suggest the need for a differentiated and locally focused legal education. Attempts to develop this in the South Pacific will be discussed in the following chapter.

⁸⁹ ‘Land’ added by *Constitution (Sixth) (Amendment) Act 2013* (Vanuatu) s 10(b).

⁹⁰ ‘May’ be consulted has been amended to ‘must’ be consulted: *Constitution (Sixth) (Amendment) Act 2013* (Vanuatu) s 11(a).

CHAPTER FOUR: DEVELOPMENT OF THE LOCAL LEGAL PROFESSION

1. Introduction

The previous chapter examined the development of law and legal systems in the South Pacific, and noted the continuing importance of both traditional and introduced elements. Nonetheless, despite the creation of many new South Pacific states with their own governance and legal systems, and despite the need for lawyers able to work within, between and across various systems and sources of law, no provision was initially made for the local education of lawyers. There was no master plan to help determine how the complexities apparent in these new states would be managed in terms of appointment of lawyers and other legal personnel, legal training or curriculum. Rather, methods of dealing with this developed, somewhat in fits and starts, over a number of years.

To understand the development of the legal profession in the South Pacific, it is helpful to look at newly independent states more generally. It will be seen that, like laws and legal systems, the development of the legal profession and the provision of legal education follows a somewhat generic pattern across former British colonies. However, these early foreign influences are not merely historical; in many respects, they continue to determine the organisation of the legal professions of Solomon Islands and Vanuatu, and throughout the South Pacific.

2. The Legal Profession in ‘the Colonies’

In the colonies of Africa, the West Indies and the South Pacific, state legal systems were commonly administered by British lawyers trained in Britain. In the earliest

colonial period, there was no need to train lawyers for the colonies as their legal systems were to be run for, and by, the colonisers. This was particularly true in the South Pacific, as it was expected that local people would continue to live primarily according to *kastom*, and introduced law was applied in the main only to non-Indigenous people.¹

However, following World War II the United Nations set a decolonising agenda, encouraging all colonial powers to move toward self-government of their colonies and overseas possessions.² It was clear to some that the advent of independence would create a need for local lawyers:

The great need in most of the territories is to train up Africans to take their proper part in the administration of justice ... On the transfer of power the territories will not only need legislators and administrators. They will also need judges and lawyers.³

Nonetheless, little legal education was initially provided within the colonies. A report from the Committee on Legal Education for Students from Africa outlined the situation.⁴ Those who wanted a legal education travelled abroad to gain the necessary qualifications. Local people from various colonies began travelling to the United Kingdom, as admission to the bar there was the means of admission to the legal

¹ As discussed in Chapter Three.

² Declaration Regarding Non-Self Governing Territories, *Charter of the United Nations* art 73:

Members ... recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end: to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses; to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement; to further international peace and security; to promote constructive measures of development ...

³ Committee on Legal Education for Students from Africa (UK), *Report of the Committee on Legal Education for Students from Africa 1960*, Cmnd 1255 (1961) 5.

⁴ *Ibid.*

profession in most colonies. In 1959, two-thirds of the student intake in the British Inns of Court was from overseas, with about equivalent numbers enrolled from each of the United Kingdom (409), Africa (438) and other Commonwealth countries (404).⁵

Unfortunately, these qualifications in law, generally as advocates, prepared students for work as a barrister in Britain and possibly similar jurisdictions, but paid little or no attention to the legal training needs of students in the colonies. Indeed, a great part of the training was not about law at all, but rather, by taking the required number of dinners at the Inns of Court, colonial students gained 'an opportunity for social and cultural development'.⁶ While less common, pupillage with a solicitor in Britain was also seen to offer 'great social and educational value which will stand the pupil in good stead when he returns to his own country'.⁷

While perhaps successfully introducing students to British culture and social life, British legal education was not really preparing students for work in newly independent states. Apart from the distance and expense of such training, almost no-one from the colonies trained as a solicitor or in general areas of law; rather, nearly all were trained as barristers. Subject matter was also inappropriate, and focused exclusively on formal law as relevant to Britain and 'common lawyers'.⁸ It was thus noted that 'when students return to their home countries [as] fully qualified barristers, they are

⁵ Ibid 4.

⁶ Ibid 11.

⁷ Ibid 14–15.

⁸ Ibid 12. For example, the study of Roman law was compulsory, but with no opportunity to study any African law, religious law or pluralism.

knowledgeable in the laws of England but they have no special knowledge of the particular laws and customs of their own territories'.⁹

Reliance on foreign lawyers continued for some time after independence in most states, as so few local lawyers had received a legal education up to that point. To use African examples, shortly before independence Tanzania had one local lawyer in its 100 practitioners, Uganda had 20 local lawyers amongst its 150 practitioners, and Kenya had 10 local lawyers amongst 300 practitioners.¹⁰ Hence, despite 'independence', the legal profession in the new states was still very largely made up of foreign lawyers, while the few local lawyers were British trained.

Numerous universities were established around the time of independence, but few offered legal training in the early post-colonial period. For example, the University of West Indies was founded as early as 1948 but it did not offer a law degree until 1970 despite some of its member nations (Jamaica, Trinidad and Tobago) having been independent since 1962.¹¹ Ghana introduced Africa's first law school only a year after independence, but most African countries took a number of years to produce their own lawyers.¹² In an unusual occurrence, the University of Papua New Guinea (UPNG) included law as one of its founding faculties in 1965,¹³ even before Papua New Guinea gained independence in 1975. However, UPNG law students were required to spend a

⁹ Ibid 11.

¹⁰ Ibid 5. These are 1959 figures. Tanganyika gained independence as Tanzania in 1961, Uganda gained independence in 1962. See Ntumu, below n 15, for comparative figures for the South Pacific.

¹¹ Following the move to independence in the 1960s, the first intake into the law degree at the University of West Indies occurred in 1970: M T I Julien, 'Why a Law Faculty in the West Indies?' (1972) 3(2) *International Bar Journal* 25, 31.

¹² Ibid.

¹³ The University of Papua New Guinea, School of Law, *About the School of Law* (2015) <<http://www.upng.ac.pg/site/schools/sol.html>>.

mandatory term in Australia, and ‘in its first years [the UPNG Law Faculty] was viewed by many as little more than an extension of the Australian Law School System’.¹⁴

In the South Pacific, the provision of legal education began at both ends of the spectrum. Although the first legal education began in Papua New Guinea prior to independence, it took almost 30 years for the remainder of the region to gain a pan-Pacific Law School. The University of the South Pacific (USP) was established in Fiji in 1968.¹⁵ However, despite Fiji becoming independent in 1970, Solomon Islands in 1978 and Vanuatu in 1980, it was not until 1994 that USP had its first intake of Bachelor of Laws (LLB) students.

3. The Legal Profession in the South Pacific

As discussed above, prior to the establishment of USP’s School of Law, South Pacific jurisdictions relied heavily on foreign lawyers, with very few overseas-trained local lawyers. Through sheer good fortune, a record exists (albeit inexact) regarding the legal profession in various South Pacific states just prior to USP introducing a law degree.¹⁶ This document was published in 1993, just prior to the 1994 commencement of USP’s LLB program. It is worth summarising here as it starkly illustrates both the state of the South Pacific legal profession at that time, and the variations in the legal profession across the many local jurisdictions.

- **Cook Islands:** Most lawyers in the Cook Islands were trained in New Zealand universities, and the Chief Justice of the High Court, and all

¹⁴ Bruce Ottley, ‘Developing Legal Education in a Developing Country: A Case Study of Papua New Guinea’ (1981–1982) 31 *Journal of Legal Education* 183, 184–5.

¹⁵ The University of the South Pacific, *About the University: USP — An Introduction* <https://www.usp.ac.fj/index.php?id=usp_introduction>; The University of the South Pacific, *The Charter of the University* (4 February 1970) <<http://socialsciences.usp.ac.fj/fileadmin/files/academic/pdo/digitised/CHARTER.pdf>>.

¹⁶ Michael A Ntuny (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993).

judges of the Court of Appeal were judges in the courts of New Zealand.¹⁷

- **Fiji:** In Fiji there had been about 150 foreign trained lawyers in the late 1980s, but by 1993 most had left Fiji, leading to shortages of legal personnel, especially for government roles.¹⁸
- **Kiribati:** There were about six qualified lawyers in Kiribati, holding degrees from universities in Papua New Guinea, Australia or New Zealand. In the courts, only the Chief Justice and the Registrar of the High Court had law degrees. There were two lawyers in private practice in Kiribati, with private legal representation often imported, most often from Fiji.¹⁹
- **Marshall Islands:** Few Indigenous Marshall Islanders had law degrees. The Chief Legal Aid officer had a degree, but others did not. Neither the High Court nor the Supreme Court had local Chief Justices, and visiting judges had high turnover rates.²⁰
- **Nauru:** In Nauru the legal profession was very small and relatively new.²¹
- **Niue:** One expat lawyer lived and worked locally in Niue, and one Indigenous Niuean lawyer lived in New Zealand and travelled to Niue from time to time to undertake legal work.²²
- **Samoa:** Samoa had lawyers working for the Attorney General's and Justice Department, in addition to 23 practitioners in about eight

¹⁷ Isaacus Adzoxornu and the Editorial Committee, 'The Cook Islands' in Michael A Ntumu (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 3, 24.

¹⁸ Don Paterson and Stephen A Zorn, 'Fiji' in Michael A Ntumu (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 26, 71.

¹⁹ Martin Tsamenyi, 'Kiribati' in Michael A Ntumu (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 75, 98.

²⁰ Jean G Zorn, 'The Republic of the Marshall Islands' in Michael A Ntumu (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 100, 138.

²¹ Tony Deklin, 'Nauru' in Michael A Ntumu (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 142, 156.

²² A H Angelo, 'Niue' in Michael A Ntumu (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 158, 178.

private legal firms. It is not clear whether any of these practitioners were Indigenous Samoans.²³

- **Solomon Islands:** Solomon Islands had some Indigenous lawyers, trained in Papua New Guinea, Australia and New Zealand, as well as a number of expat lawyers.²⁴
- **Tokelau:** Tokelau had no lawyers, but one Indigenous Tokelauan was studying law overseas.²⁵
- **Tonga:** Tonga used a system of 'licensed advocates' who did not need law degrees, and also had a number of licensed practitioners with law degrees from New Zealand. The Solicitor General, Attorney General, Senior Crown Counsel and Crown Counsel were all degree-qualified Tongans.²⁶
- **Tuvalu:** There were fewer than six national qualified lawyers in Tuvalu.²⁷
- **Vanuatu:** Vanuatu had five lawyers working within government, and between 5 and 10 in private practice. Most of the government lawyers, but only one of the private practitioners, were Ni-Vanuatu.²⁸

Clearly very few local students had graduated in law, and those who did travel overseas for their legal education faced many of the difficulties common to students from other colonies and newly independent states.²⁹ Firstly, the overseas countries

²³ C Guy Powles, 'Western Samoa' in Michael A Ntumu (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 395, 428.

²⁴ John Nonggorr, 'Solomon Islands' in Michael A Ntumu (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 268, 294.

²⁵ A H Angelo, 'Tokelau' in Michael A Ntumu (ed), *South Pacific Island Legal Systems* (University of Hawaii Press, 1993) 296, 313.

²⁶ C Guy Powles, 'Tonga' in Michael A Ntumu (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 315, 340.

²⁷ Martin Tsamenyi, 'Tuvalu' in Michael A Ntumu (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 342, 363.

²⁸ Don Paterson, 'Vanuatu' in Michael A Ntumu (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 265, 393.

²⁹ All of the difficulties enumerated below are drawn from sources dealing specifically with the need for a Law School in the South Pacific. Interestingly, however, almost all such concerns had been raised a

where South Pacific students undertook their degrees were quite foreign in almost every respect from what they were used to at home, and thus students were faced with the 'obvious ordeal of cultural adjustment'.³⁰ Studying overseas was expensive and drained scarce resources from island communities.³¹ South Pacific students commonly had less facility with formal English language than their foreign counterparts, and thus struggled more with their studies, particularly in a field so steeped in the written word.³² Further, these students were learning foreign law in a foreign context. Much of what was taught in overseas law schools would be difficult, irrelevant or out of context for students from the South Pacific, who had no experience of the environments in which that law was based.

In addition to the difficulties faced by students themselves, legal training undertaken in other countries was not equipping graduates with the attributes needed by lawyers in the Pacific Islands. The 'conventional LLB' studied overseas was seen to have 'basic flaws' in terms of equipping students for work in their home countries.³³ The courses were not designed to give them an opportunity to study the 'systems, constitutions and unique legal features of their own countries'.³⁴ In many instances, the foreign legal training left the students with a 'rigid adherence' to the law they learnt overseas, and with subsequent difficulty coping with the interactions between 'written constitutions,

number of years earlier in relation to legal education in other newly independent states by the Committee on Legal Education in Developing Countries: Committee on Legal Education in the Developing Countries, *Legal Education in a Changing World* (International Legal Center and Scandinavian Institute of African Studies, 1975).

³⁰ Guy Powles, 'Legal Education and Information' (1984) 12(1) *Pacific Perspective* 17, 19.

³¹ Overseas study was of 'considerable expense either to themselves, their families, government or aid agencies': R Grimes, 'Legal Education in the South Pacific — Producing Tomorrow's Lawyers' (Discussion paper, USP Pacific Law Department, 1995) 3.

³² Powles, 'Legal Education and Information', above n 30.

³³ Ibid 21.

³⁴ Ibid 19.

custom law, land tenure, and the working together (and conflict between) the different parts of [their own] national legal framework'.³⁵ The idea that Pacific Island students could learn law overseas, and then be sufficiently 'topped up' with knowledge of their own constitution and law, was seen to underestimate the demands which would be made on lawyers upon return to their home countries.³⁶ While the common law taught in overseas law schools was applicable to some degree, the history and development of the Pacific Islands meant that something different was needed .

It became apparent that many overseas-trained lawyers were 'not immediately suited to work in the USP region',³⁷ and that lawyers working in the South Pacific needed particular expertise and understanding which could not be acquired in overseas universities.³⁸ The process of training lawyers was thus criticised for not producing 'a sufficient range of lawyers who fully *understand* at first hand the custom and laws operating in the various jurisdictions of the region'.³⁹ Lawyers needed not only to be trained in law, but also to learn that law *in context*. Such was the concern, Powles concluded that 'it is arguable that no law graduate (and certainly no person who has had no background Island education) should be admitted to practice' without studying matters related to the South Pacific context.⁴⁰ Further, '[i]n an ideal world, every Pacific Island lawyer would have a first degree from the University [of the South Pacific]'.⁴¹

³⁵ Ibid.

³⁶ Ibid.

³⁷ A H Angelo and J Goldring, 'The Study of Law at the University of the South Pacific' (1994) 24 *Victoria University of Wellington Law Review* 103, 104.

³⁸ Powles, 'Legal Education and Information', above, n 30, 20.

³⁹ Grimes, above n 31, 3 (emphasis in original).

⁴⁰ Powles, 'Legal Education and Information' above n 30, 21.

⁴¹ Ibid 17.

The idea of overseas legal education being sufficiently supplemented with local knowledge on a graduate's return home was seen to be a 'serious underestimate' of local lawyers' needs. Rather, local lawyers would need to study:

- a) [each lawyer's] own jurisdiction in its historical and social context — which includes the nature and operation of the two inheritances (both indigenous and introduced) of mores, customs and law; the circumstances in which local and imported concepts came to be brought together to become the sources of law of the modern state, and the consequences of such bringing together as viewed in the light of the post-independence operation of the constitution and the legal system. In other words, every lawyer should have a grasp of his or her jurisprudence.
- b) The role of written constitutions as the definers of the sources and areas of operations of law, of the organs of state, and of the relationships between them ... knowledge is specific to the country concerned.
- c) An understanding of the nature of political power, where it lies and how it is wielded ... Elsewhere one has the impression that conventional Western style legal systems are incapable of acting otherwise than as the means of enhancing or at least preserving ... disparities. Must this be so in the Pacific?⁴²

In addition to producing lawyers with an understanding of the local context, the training of lawyers in the South Pacific was hoped to have a snowball effect on the production of local legal resources. For example, it was anticipated that legal academics in the South Pacific would research and publish on topics of local relevance, teaching materials would then become more readily available, and knowledge about the region would become more accessible.⁴³ Students would research areas of real importance to their own countries, and would learn about and contribute to the development of Pacific law. Lawyers with sufficient contextual legal knowledge would

⁴² Powles, 'Legal Education and Information', above n 30, 20.

⁴³ Ibid 21.

be able to assist in the orderly and appropriate development of Pacific law, by contributing to 'thorough research and well-presented conclusions [without which] ill-informed politics and opinion fill the vacuum'.⁴⁴

The introduction of the LLB degree at USP was anticipated to create 'exciting prospects in terms of development of law within the region, and also ... developing the knowledge of the international community about the law of the Pacific'.⁴⁵ The region would provide 'a virgin field for research, [with] a well motivated and interesting body of students with a unique cultural background'.⁴⁶

For legal education to generate the desired outcomes for local lawyers and South Pacific states, it would need to cater to the role of lawyers in the local context. Again, it is worth looking at the role of lawyers and legal education in newly independent states more broadly to help understand the South Pacific situation.

4. The Role of Lawyers and Legal Education

As discussed above, many formerly colonised states around the world had similar issues to states in the South Pacific. That is, despite having complex and unique legal systems involving an amalgam of introduced and local law, they needed to rely on lawyers from outside the jurisdiction, or send local students overseas for legal education. Lawyers were thus trained without attention to local context, learning foreign law in foreign environments without reference to the law they would need at home, or the legal environment in which they would need to work. In some newly independent states, an understanding of context was recognised as all the more

⁴⁴ Ibid.

⁴⁵ Angelo and Goldring, above n 37, 107.

⁴⁶ Ibid.

necessary because lawyers would need to not only practise law, but to research it, document it and develop it. Africa, West Indies and Papua New Guinea illustrate the point.⁴⁷

In Africa, legal education was a topic of considerable interest immediately following independence. It was assumed that legal professionals would 'assist in the transformation of African legal systems and aid in the development of Africa'.⁴⁸ Law was seen as a 'critical instrument in Africa's development', giving rise to a pressing need for African legal education.⁴⁹

Similar sentiments and needs were expressed in relation to legal education in the West Indies, which recognised

the general need throughout the world to promote, encourage and support respect for the rule of law and its application, and the need for personnel trained in law and thereby equipped to advise in advisory capacities, international and national agencies, central and local governments, public and other statutory corporations, commercial and industrial enterprises, and a number and variety of other concerns.⁵⁰

⁴⁷ These are used as examples of states/regions where governance and law have been surrendered by the former colonial power upon independence. These are different from Australia or New Zealand, for example, where governance and law remain in the hands of colonisers.

⁴⁸ Samuel O Manteaw, 'Legal Education in Africa: What Type of Lawyer Does Africa Need?' (2008) 39 *McGeorge Law Review* 903, 906.

⁴⁹ Ibid 917. Commencing in 1959 in Ghana, with the first law graduates there completing their degrees in 1963, legal education was introduced across Africa, and, by 1972, 43 universities had Faculties of Law.

⁵⁰ Mindie Lazarus-Black, 'After Empire: Training Lawyers as a Postcolonial Enterprise' (2008) 25 *Small Axe* (Duke University Press) 38, 44, quoting Council of Legal Education, *Legal Education in the West Indies 1963–1972* (1972) 11.

Further, law was recognised as ‘an instrument of social and economic justice’⁵¹ and local legal training was seen as enabling a ‘struggle against empire for local identity and authenticity’.⁵²

In Papua New Guinea, the Commission on Higher Education had acknowledged the importance of a law faculty given the soon-to-be independent state would need

men trained in the role of law and understanding the rule of law who might now be expected to lend stability to politics and who will in the not too distant future have to provide candidates for ministerial, administrative and judicial offices which are second to none in importance in a free and stable society.⁵³

New Guinea’s leaders had adopted as an article of faith ‘the need to examine afresh the appropriateness of all law and legal systems’ as part of the development of the new state.⁵⁴

A more general overview of legal education was also provided in 1975 by the Committee on Legal Education in the Developing Countries.⁵⁵ This international committee, made up of (predominantly academic) lawyers from developed and developing states, met to discuss legal education in a changing world. The ‘changing world’ referred to former colonies which had become or would soon become

⁵¹ Lazarus-Black, above n 50, 39, quoting Sir Fred Phillips, *The Evolving Legal Profession in the Commonwealth* (Oceania Publications Inc, 1978) 43.

⁵² Ibid, 38.

⁵³ J B K Kaburise, ‘Access to Legal Education in Papua New Guinea’ (1987) 3(3) *QUT Law Journal* 163, 165.

⁵⁴ Powles, ‘Legal Education and Information’, above n 30, 18. The first intake of law students at UPNG occurred in 1967.

⁵⁵ Committee on Legal Education in the Developing Countries, above n 29.

independent. The committee spent considerable time looking at the big picture of legal education, rather than detailed curriculum issues.⁵⁶

The committee voiced a similar view to those reported above, that is, that the purpose of legal education in newly independent states was far broader than the creation of 'practising lawyers', although general law-related skills would be useful in a development context.⁵⁷ Lawyers who could innovate and facilitate complex transactions would be able to 'define and analyse problems; counsel and plan a course of action; negotiate and settle disputes; define and advocate a position; and frame and implement rules'.⁵⁸ Beyond that, however, legal education had a major role to play in the broader development of lawyers who could promote nation building, social development, good governance and the protection of rights. Those with legal education would be responsible for building political institutions, governance systems, ways to organise and expand economic activities, secure distributive justice, effect orderly changes in social order, and reveal and analyse the structures, interests and powers of the state and others.⁵⁹ The committee noted that in most of these newly independent countries, law was seen as an instrument of change and development, responsible for defining the rights of citizens amongst themselves and in relation to the state, for establishing incentives and disincentives to particular behaviours, and for providing access to justice.⁶⁰ Consequently, lawyers would have a serious role and major responsibilities in these new states.

⁵⁶ Ibid 20, 23–4.

⁵⁷ Ibid 38.

⁵⁸ Ibid.

⁵⁹ Ibid 37.

⁶⁰ Ibid.

Legal education was thus envisaged as creating a coterie of local elites who knew about law, and who could use it to effect — or to continue — change in their societies. Those educated in law would be essential players in the way their nations developed. Further, law faculties would engage in research and scholarship which would help to ‘understand the context of law, and to adapt and reformulate legal philosophies, policies and doctrine’.⁶¹ There appeared to be a common view that local lawyers in any newly independent state would have a great deal to contribute in terms of nation building and legal development, in addition to the basic practice of law.

Despite the articulation of different emphases for post-colonial legal education, including building new nations, strengthening state institutions, developing local legal systems, aiding social and economic development, or simply better preparing lawyers for practice in the local context, the law degrees introduced to many former colonies looked very similar to one another, and very similar in fact to a British law degree.

By the 1990s when the South Pacific law degree was in planning, there were clear calls for better contextualised legal education, but perhaps with less emphasis on the transformative potential of law than had been seen in relation to jurisdictions in Africa, the West Indies and Papua New Guinea.⁶² If that was the case, the different emphasis may have been due to the long gap between South Pacific states gaining independence and introducing local legal education; the need for lawyers to undertake day-to-day legal work may have overtaken broader needs and aspirations in the minds of the planners. Ten years prior to the introduction of the South Pacific law degree it had

⁶¹ Ibid 39.

⁶² See notes from 1992 Law Curriculum Workshop, appended to C Guy Powles, ‘Learning Whose Law? Legal Education in Pacific Societies. Choices for the Pacific Island Region’ in Commission on Folk Law and Legal Pluralism, *Papers presented at the Congress at Victoria University of Wellington, August 1992* (Law Faculty, Victoria University of Wellington, 1992) 269–72.

already been noted that ‘the legal systems of the region, and the people who work in them, struggle to establish themselves and to provide the services required of them in difficult and demanding circumstances’.⁶³

It is important to acknowledge that the introduction of the USP law degree took many years to achieve, and would not have occurred without constant determination and many small steps taken along the way. It is worth reviewing those steps leading to the establishment of the South Pacific law degree, before looking at the content of the degree itself.

5. The Development of Law Programs at USP

The first intake of students to the USP law degree occurred in 1994. South Pacific Islanders who studied law prior to this were commonly trained in the United Kingdom, or later in Australia, New Zealand or Papua New Guinea.⁶⁴ As already noted above, although that training did include relevant ‘common law’, it was intended for environments very different from their own. Papua New Guinea may have offered Pacific Islanders a more similar setting than Australia, New Zealand or the United Kingdom, but in 1994 it already had a population of over 4.5 million people; the next largest Pacific country, Fiji, had well under 1 million people. Eight of the 12 USP member countries had less than 100,000 people each.⁶⁵ For students from smaller

⁶³ Powles, ‘Legal Education and Information’, above n 30, 17.

⁶⁴ Grimes, above n 31.

⁶⁵ United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), *Statistical Year Book for Asia and the Pacific* (2009) <http://www.unisdr.org/files/13373_ESCAPSYB2009.pdf>.

Pacific Island countries, study in Papua New Guinea may have been as unsettling and as alien as study in New Zealand or Australia.⁶⁶

The path to a local law program began in the 1960s and 1970s as preparations for independence increased throughout the South Pacific. As a parting gift to the region⁶⁷ the British Government established the University of the South Pacific in Fiji in 1968.⁶⁸ This was expected to train the local populace for civil service roles, as administrators in government offices and as teachers in government schools.⁶⁹ USP was intended to train local people to do the roles previously done by the 'stalwarts of the British colonial service who were packing their bags to return to England, and ... the Australians and New Zealanders who were also preparing to return to their respective homelands'.⁷⁰ Despite the recognition in other recently independent states of the importance of training local lawyers, it appears that no law teaching at USP was envisaged.

[T]he idea that public servants ... might need and wish to know something about the laws that they were going to administer, or that there would be demand from the private sector for legal advice from lawyers in private practice ... seems to have occurred neither to the planners who drew up the report for the new university nor to the government ministers of the island countries ...⁷¹

However, it soon became clear that law was an essential part of the training of at least some civil servants. Proposals were made for the establishment of a Regional Law

⁶⁶ Note, however, that Papua New Guinea is predominantly Melanesian, like Solomon Islands and Vanuatu, so it may have been less foreign for students from these states.

⁶⁷ Don Paterson, 'Ron Crocombe's Contribution to the Promotion of Law at the University of the South Pacific' in Linda Cowl, Marjorie Tuainekore Crocombe and Roderick Dixon (eds), *Ron Crocombe: E Toa! Pacific Writings to Celebrate His Life and Work* (USP Press, 2013) 167.

⁶⁸ Angelo and Goldring, above n 37, 103.

⁶⁹ Ibid.

⁷⁰ Paterson, above n 67.

⁷¹ Ibid.

Institute in the early 1970s, but the proposal had to compete with what were seen as more pressing political and economic matters, and the establishment of a Law Institute was given low priority.⁷² A later proposal was made to USP and to the Commonwealth Secretariat in 1976 but this time questions of cost, and questions of control, stopped the proposal being implemented.⁷³

Staff of the university began to make their own early contributions to teaching law in the Pacific. Law topics were introduced to non-law courses, and law courses were introduced to non-law degrees.⁷⁴ The Vice-Chancellor of USP asked those teaching public administration to introduce some law 'to give students a firmer understanding of the constitutional basis of public administration in their countries'.⁷⁵ A major difficulty with this was the lack of resources available for teaching law in the Pacific; constitutions were new, local law reports non-existent, and statute books were incomplete.

In 1979, the Institute of Pacific Studies published a volume of 'Pacific Constitutions' which included constitutions mainly of Polynesian countries. This was a giant step toward providing resources for the teaching of law locally. 'Selected Constitutions of South Pacific Countries' was then produced as a 'reader' for a course in Public Administration, to allow access to newer constitutions and those not covered by the initial volume. Constitutions could not be understood in isolation, however, and soon a volume of 'Supplementary Documents' including treaties, legislation and explanatory

⁷² Powles, 'Legal Education and Information', above n 30, 17.

⁷³ Ibid.

⁷⁴ For example, corporate and insolvency law was taught as part of an accountancy degree: Angelo and Goldring, above n 37, 105.

⁷⁵ Paterson, 'Ron Crocombe's Contribution to the Promotion of Law at the University of the South Pacific', above n 67, 169.

material was produced.⁷⁶ This was followed by a second volume of 'Pacific Constitutions' which included most of the Melanesian and Micronesian constitutions not included in the earlier volume.⁷⁷

During the same period, the Pacific Islands Law Officers' Meeting (PILOM) acknowledged and grappled with the need for trained legal personnel in the Pacific Islands. At its 1981 meeting PILOM discussed its concerns about, in particular, the lack of expertise in legal drafting and the lack of training of lower court personnel. In addition, concerns were raised regarding the shortage of Pacific Island legal materials, the lack of court reporting and of local legal publications, the difficulty of exchanging legal information and experience, and the inability to develop a regional approach on matters such as appeal courts and industrial property.⁷⁸ The same concerns were raised in PILOM's 1983 meeting but not resolved. A report at the time noted that 'considerable financial support will be needed before the enthusiasm and determination of government legal officers can bear fruit'.⁷⁹ It also acknowledged that the small amount of research and publishing which did occur in this sphere, and which was essential to South Pacific lawyers, was conducted not by any 'legal' organisation, but rather by the Institute of Pacific Studies and the South Pacific Social Science Association.⁸⁰ Publications issuing from the Institute of Pacific Studies included work on legal problems in the region, especially those relating to land and land tenure.⁸¹

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Powles, 'Legal Education and Information', above n 30, 17.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Angelo and Goldring, above n 37, 104.

In 1985, USP established the Pacific Law Unit (PLU) in Vanuatu, staffed by one academic. Such was the demand for law courses that before long the unit was teaching 300 students each semester, and had expanded to employ three staff.⁸² Most of the teaching was conducted by 'extension' (now known as distance education) and only a few students actually attended to study at the Emalus Campus in Port Vila, Vanuatu.⁸³ The PLU initially offered a Law Certificate, but soon after also introduced a Diploma in Legal Studies.⁸⁴ The courses offered were not intended to train lawyers, who would continue to study overseas, but rather to train others needing legal knowledge, especially in paralegal and administrative contexts. Training was provided mainly for local students working as lay magistrates, police officers, court staff and land administrators.⁸⁵

In 1990, the Government of Fiji asked USP to consider offering its own Bachelor of Laws degree.⁸⁶ From this point onward progress was made quickly. A four-year LLB program was proposed,⁸⁷ and a workshop was held to determine curriculum matters. A committee of 24 met in March 1992 to discuss a syllabus and teaching plan for the proposed new degree. The committee included representatives of USP itself and of USP member countries. It had representation from judges, government lawyers and other legal professionals. The committee also included consultants from outside the USP region: four professors from other Commonwealth law schools, two professors from the French University of the Pacific, and two lawyers from the United Kingdom.

⁸² Paterson, above n 67, 171.

⁸³ Ibid.

⁸⁴ Angelo and Goldring, above n 37, 104.

⁸⁵ Ibid 106.

⁸⁶ Paterson, 'Ron Crocombe's Contribution to the Promotion of Law at the University of the South Pacific', above n 67, 171.

⁸⁷ Angelo and Goldring, above n 37, 104.

The Committee was chaired by the Assistant Director of the Legal Division of the Commonwealth Secretariat in London.⁸⁸

As was to be expected at a meeting of senior lawyers from the region, most of them shared an experience of legal education in Australia or New Zealand which reflected the educational practices of 15 to 20 years ago ... no delegate to the meeting came from a background clearly identified as that of customary law. As there are no law teachers Indigenous to the region, the academic consultants brought outside perspectives.⁸⁹

With only minor amendments, the recommendations of this Committee were approved by the Board of Studies of the USP School of Social and Economic Development in June 1992, and the USP LLB program was finally underway.⁹⁰ The following year was spent in preparation for the new program. USP's first LLB students commenced at Laucala Campus in Fiji in 1994, and in 1996, LLB teaching began at Vanuatu's Emalus Campus.⁹¹

The history of law teaching in the South Pacific may appear unremarkable, but in fact the eventual introduction of an LLB degree was significant both symbolically and substantively. Newly independent countries in the South Pacific could not demonstrate their independence while their legal and judicial services were staffed only with 'assistance from expatriate lawyers, many of whom come to the region for short periods of time from a variety of legal backgrounds as part of various international aid programs'.⁹²

⁸⁸ Ibid, 105.

⁸⁹ Powles, 'Learning Whose Law?', above n 62, 258.

⁹⁰ Angelo and Goldring, above n 37, 105.

⁹¹ Paterson, 'Ron Crocombe's Contribution to the Promotion of Law at the University of the South Pacific', above n 67, 171.

⁹² Angelo and Goldring, above n 37, 104.

With the introduction of the LLB program at USP, for the first time lawyers from 12 individual and independent South Pacific nations could be trained, if not right at home at least locally, in (somewhat) familiar surrounds, with other students of (somewhat) similar backgrounds. Students from the smaller South Pacific states would have an opportunity to complete a law degree not as a tiny minority in a foreign law school learning the laws of others, but together as part of a whole of a student body learning about their own laws. The first law degree was awarded by USP at the end of 1997, and today USP's School of Law is the main provider of law graduates in the South Pacific.⁹³

The introduction of the law degree by USP could be seen as one more step in the gradual development of legal training in, and for, former colonies. Like legal education in other recently independent states, it was hoped that the South Pacific law degree would reduce reliance on overseas lawyers, and better prepare local lawyers for the legal work and legal development required in their home jurisdictions. It was anticipated that providing legal education locally would help create resources appropriate to the local context, and by doing so help to strengthen the local legal environment generally.

However, providing legal education *in* the Pacific, specifically *for* the Pacific, could not by itself ensure that local lawyers were prepared for the local context. The form of the law degree, the institution in which it was taught, the teaching methods used, the personnel employed, and the content of the degree looked not dissimilar to 'common

⁹³ 'It is estimated that more than 80 per cent of the legal profession in the South Pacific are graduates of USP': R B Cartledge, 'Thrown in at the Deep End' (2011) Issue 3 (October–December) South Pacific Lawyers Association *newSPLash* 6
<https://docs.wixstatic.com/ugd/0217f9_8b9ed8f97907487ab0535c89320a7286.pdf>.

law' degrees elsewhere, in both colonising and previously colonised states. Legal education in the South Pacific, like laws, legal systems and legal professions, was largely shaped by outside influences but given a South Pacific flavour.

6. Conclusion

This chapter has outlined the historical development of the local legal profession, noting the similarities between experiences in the South Pacific and those of other former colonies. While local laws and legal systems were seen to develop as an amalgam of traditional and introduced concepts, institutions and actors, the early development of the legal profession in the South Pacific took less account of the local environment, and instead mirrored the development of legal professions in colonising, and other newly independent, states.

A recognition of the need to develop a truly 'local' legal profession led to the more recent development of a South Pacific law degree. It is worth noting, however, that the 'local' law degree was expected to cater for local students and include local context *in addition to* covering what would be studied in common law degrees elsewhere; the central foundation was always the common law, rather than the local context. It is also apparent from the discussion above that, despite the push to develop a more locally oriented legal profession and local legal education, external influence played a significant role in creating the local law curriculum. External influence has continued to play a part in more recent attempts to revise the curriculum, as will be discussed in the following chapter.

CHAPTER FIVE: LEGAL EDUCATION IN THE SOUTH PACIFIC

1. Introduction

The previous two chapters have examined the development of laws, legal systems and legal professions in Solomon Islands and Vanuatu, and the move toward providing local legal education in newly independent states, both generally and in the South Pacific in particular. Following independence, South Pacific jurisdictions continued to rely on lawyers trained overseas in 'common law' environments, and it was hoped that with the introduction of a local law degree, a more contextualised common law legal education could be offered.

As discussed above, the development of the legal profession and the move to local legal education in the South Pacific followed a path common to many other former colonies and newly independent states. As will be seen below, the same is true of the law curriculum, which also appeared to be modelled closely on those of other states.

2. The Law Curriculum in Formerly Colonised/Newly Independent States

The Committee on Legal Education in the Developing Countries¹ reviewed key features of common law education in the formerly colonised world. It found that, generally, legal education in newly independent states was provided in universities created along British/European lines. Lectures and tutorials were the norm, with a focus on transmission of information through the magisterial lecture. There were some variations regarding the length of the academic and practical components, often dependent on whether or not a practical training institute was available, and/or

¹ Committee on Legal Education in the Developing Countries, *Legal Education in a Changing World* (International Legal Center and Scandinavian Institute of African Studies, 1975).

whether supervision with practitioners was available. Generally, however, the model of classroom-based academic learning was distinct from the practical legal training which followed. In addition, the categories of law which had been developed in Britain, to some degree through Blackstone's treatise,² were repeated in legal education in the newly independent states, and given an emphasis which may or may not have been warranted in truly 'local' legal education.

In Zambia, for example, the degree included compulsory courses in legal process; contract, tort, criminal, land, commercial, company, family, constitutional and administrative law; and evidence and jurisprudence, and hence looked not unlike the British law degree.³ It was claimed that 'with slight local variations, the British legal education curriculum was introduced wholesale in African countries'.⁴

Legal education in the West Indies appeared slightly more locally oriented, although structured similarly to the British degree — introduction to law and legal systems of the West Indies; history of the Caribbean; law and society; constitutional law and constitutions of the West Indies; civil obligations; and criminal, property and public international or comparative law were included.⁵ Students were also required to study the use of English language and a social science elective.

² William Blackstone, *Commentaries on the Laws of England* (1765–1769). Blackstone's treatise has been given credit for the almost universal spread of common law across English-speaking countries. See, eg, Wilfrid Prest, 'Legal History in Australian Law Schools' (2006) 27 *Adelaide Law Review* 267, 267: 'Blackstone's great achievement was to provide, in his *Commentaries on the Laws of England* ... a book which could serve as the basic text for systematic academic education in the common law.' See also W S Holdsworth, 'Sir William Blackstone' (1928) 7(1) *Oregon Law Review*, 157.

³ Nicholas A Kahn-Fogel, 'The Troubling Shortage of African Lawyers' (2012) 33(3) *Journal of International Law* 719, 754.

⁴ Samuel O Manteaw, 'Legal Education in Africa: What Type of Lawyer Does Africa Need?' (2008) 39 *McGeorge Law Review* 903, 919.

⁵ Mindie Lazarus-Black, 'After Empire: Training Lawyers as a Postcolonial Enterprise' (2008) 25 *Small Axe* (Duke University Press) 38, 46.

New Guinea's degree was based on an Australian law curriculum (which was itself based on the British). Its initial core included sources of law; precedent; legal logic; constitutional history; interpretation of documents; contracts; tort, property, constitutional, administrative, criminal, commercial, family and company law; civil and criminal procedure; evidence; conflict of laws; jurisprudence; and wills and estates.⁶

As might be expected, the initial South Pacific degree was not dissimilar, and was also modelled quite closely on a British/Australian/New Zealand core. It included courses in legal system, contract, tort, criminal law and procedure, public law, constitutional law, property law, equity, trusts, succession, and the skill courses legal research and writing, legal drafting, and English for academic purposes. Attention to context was apparent in the addition of courses on principles and problems of land tenure, study of society, current developments in Pacific law, and a social science elective.⁷

While the degrees mentioned above varied in some respects, none were radically different from one another. All were heavily influenced by British traditions of legal education, unsurprising given that those creating the programs were themselves products of British, or similar, common law legal education.

It is important to note also that there was little distinction between the legal education offered in predominantly Indigenous former colonies such as those of Africa and the South Pacific, and those of predominantly non-indigenous states such as Australia and New Zealand. Even now the areas of law required for admission in Australia are similar to those taught at the University of the South Pacific (USP): contract, tort, criminal,

⁶ Bruce Ottley, 'Developing Legal Education in a Developing Country: A Case Study of Papua New Guinea' (1981–1982) 31 *Journal of Legal Education* 183, 185.

⁷ Options were Introduction to Politics; Government and Public Policy in the South Pacific; Contemporary History: A H Angelo and J Goldring, 'The Study of Law at the University of the South Pacific' (1994) 24 *Victoria University of Wellington Law Review* 103, 108.

company, property, constitutional and administrative law; equity; civil procedure; evidence; and professional conduct.⁸ In New Zealand, fewer areas of knowledge are required: legal systems; and contract, tort, criminal, public and property law (including land law, equity and succession), and legal ethics.⁹

The above demonstrates the degree to which British traditions spread outwards from the centre in terms of legal education, and continue to dominate in former colonies. Even in new sovereign states where populations are primarily Indigenous, where *kastom* is a recognised source of law, and where local traditions have been explicitly protected by the constitution, legal education remains heavily based upon British traditions. While the South Pacific law degree and those in other independent states were intended to provide legal education suited specifically to local environments, the British traditions have provided the common foundations for these, dictating both the basic organisation of the degrees, and a large proportion of the content.¹⁰

3. USP's Law Curriculum

The University of the South Pacific offers both a Bachelor of Laws (LLB) degree and a Professional Diploma in Legal Practice (PDLP). The LLB is a four year undergraduate degree, while the PDLP offers practical preparation for work as a lawyer.

⁸ In Australia, the Law Admissions Consultative Committee (LACC) recommended uniform admission requirements for Australian states and territories in 1992. Amongst other things, it recommended that all lawyers should have studied the listed areas of legal knowledge (now known as the 'Priestley 11' after the Chairman of the LACC): Law Admissions Consultative Committee, 'Uniform Admission Requirements' (Discussion Paper and Recommendations, April 1992) 24–5. A more detailed list of the 'academic areas of knowledge' can be found in the *Legal Profession Uniform Admission Rules 2015* (NSW), Schedule 1 <<https://www.legislation.nsw.gov.au/#/view/regulation/2015/240/sch1>>.

⁹ Email to author from Ruiping Ye, Senior Legal Officer, New Zealand Council of Legal Education, November 2017.

¹⁰ For an excellent discussion of this phenomenon from an earlier time, see Committee on Legal Education in the Developing Countries, above n 1.

a) Specific Courses in the South Pacific Bachelor of Laws Degree

In terms of substantive law, the core of the South Pacific LLB appears very similar to that of an Australian law degree. Course descriptions for the South Pacific LLB core courses are reproduced below to give the reader a better understanding of the structure and content of the degree. Given that the degree was introduced to prepare South Pacific lawyers for the South Pacific legal environment, it is worth looking for local content in each core course description.

LW110 Law and Society

This course considers, among other things, the question of what is law and the difference between law, justice, ethics and morality. It also looks at the different types of legal systems including the criminal and civil justice systems. The question of who decides law and justice issues, the sources of law and *the historical development of law in the South Pacific is also considered as well as current issues for law and lawmakers.*

LW111 Courts and Dispute Resolution I

This course introduces first-year students to the skills essential to the practice of law: analysis, writing, and oral advocacy. Study of the court structure, process and personnel, the nature of legal reasoning and the doctrine of precedent establish the framework through which students will learn to draft clear and concise predictive legal analysis using grammatical English. Students enrolled in face-to-face mode will also begin to develop oral advocacy skills through presentations in tutorials.

LW112 Legislation

This course considers how Parliaments work as law-making bodies. It looks at the *history of Parliaments in the South Pacific and the operation of South Pacific, United Kingdom and other statutes.* Other matters to be considered include the Constitution and statutes as sources of law; types of legislation; reporting legislation; introduction to the rules concerning statutory interpretation; legal language.

LW113 Courts and Dispute Resolution II

This course builds on the skills developed in LW111 Courts and Dispute Resolution I and introduces students to legal research. The nature of legal reasoning will be examined in greater depth, particularly with respect to the determination of issues and the resolution of legal complexities. The focus writing exercises will shift from predictive to persuasive legal analysis, with continued emphasis on the importance of grammatical English expression. Finally, students enrolled in face-to-face mode will continue to develop their oral advocacy skills through the presentation of longer, and more formal arguments in court settings.

LW201 Law of Contract I

This course is designed to be the first of two courses on the law of contract. The second is the second semester course LW202 Law of Contract II. The course commences with an introduction to contract law and *a consideration of its place within the legal systems of the USP region, including an examination of contract and customary law*. This is followed by an examination of the requirements that are necessary to the formation of a contract. The course also deals with contractual terms and considers the relationship between the law of contract and the doctrine of estoppel.

LW202 Law of Contract II

This course is the second of two courses in contract law and follows LW201 Law of Contract I. This course examines the circumstances in which a contract may be set aside by the courts. This includes where one of the parties to the contract is under a disability, and the doctrines of mistake, undue influence, unconscionability and illegality. This course also considers the way in which a valid contract is discharged. Remedies for breach of contract are also examined.

LW203 Torts I

This course is designed to be the first of two courses on the law of torts and to precede LW204. This course examines trespass to the person and related areas, principles of negligence including special topics, e.g. defective products, defective promises, employer's liability to employees, statutory torts, general defences, assessment of damages, death in relation to tort, loss distribution.

LW204 Torts II

This course examines in detail defamation, passing off (interference with intellectual property) nuisance and related topics. It also examines the law relating to the identification and quantification of different damages, and the use of equitable remedies such as injunctions.

LW205 Criminal Law and Procedure I

This course commences with a general introduction to the theory and practice of criminal law, *examining the sources of criminal law in the South Pacific*, and the doctrines involved in establishing criminal liability. The course then proceeds to consider a number of discrete areas of substantive criminal law, including homicide (murder, provocation and manslaughter), assault and related offences, sexual offences, property offences (including white collar crime) and public order offences.

LW206 Criminal Law and Procedure II

There are three major parts to the course. The first is an examination of the most commonly used criminal defences, including intoxication, self defence, insanity, automatism, duress, coercion, mistake and also a number of issues in defences. The second part of the course moves on to examining in detail a number of doctrines involved in criminal law, including participation in crime and preparatory offences. The third part of the course is concerned with *criminal procedure and the criminal justice system as it operates within the South Pacific region*.

LW300 Property Law I

The aim of this course is to provide an understanding of general principles of property law. In particular the course considers the concept of property and its significance in society, the nature and range of interests and rights that people can have in relation to property, and the ways in which law is used to regulate, control and protect the acquisition, use and alienation of property. Consideration is given to personal property, including intellectual property and real property *within the context of the laws and customs of the countries within the USP region*.

LW301 Property Law II

This course concentrates on introduced land law. In particular, there will be considerations of freehold estates, perpetual estates, fixed term estates, inheritable estates, commoners' allotments, leasehold estates; the registration system for such estates; and the physical planning *legislation that regulates the use of such land in many countries of the USP region.*

LW304 Legal Drafting

This course begins with an examination of the principles of statutory interpretation. It proceeds to the intensive development of skills required to competently draft legal documents. Ambiguity, vagueness, gender neutral language, plain English and tabulation of paragraphs are considered. These and related skills are further developed in the context of specific types of documents including contracts, deeds, sworn statements, legislation and other specific types of documents. The course includes the identification and incorporation of clients' instructions and policy goals into legal documents.

LW306 Legal Ethics

Any person studying for a professional degree should have some knowledge of the ethical principles upon which the practice of all professions is based. Students of law in particular require an understanding not only of the organisation, nature, structure, practice and operation of the legal profession, but also an appreciation of *the ethics which impact upon their work as lawyers and their relationship with the community.* The duties imposed on the lawyer can be seen as being grounded in ethics. These duties, to the court and to the client, will be considered in this course.

LW308 Constitutional Law

This course examines the law relating to *the constitutions of countries of the South Pacific.* This course examines in some detail the provisions of written constitutions, relating both to government and to fundamental rights and freedoms, also to judicial remedies for contravention of the provisions of a written constitution. In addition this course considers legislation, principles of common law and equity and *rules of customary law to the extent that they relate to the constitutions of countries of USP region.*

LW309 Administrative Law

This course provides an understanding of administrative law and *its application in the countries of the South Pacific*. The course examines in detail the principles of judicial review of decisions by public officials and institutions, in particular the principles of lack and excess of jurisdiction, abuse of power, error of law, unfairness, repugnancy and uncertainty. The course also examines the scope and availability of the remedies that can be provided by the courts.¹¹

The following course, which focused entirely on local jurisdictions and had been compulsory since the introduction of the LLB in 1994, was dropped from the core program in 2015:

LW305 Current Developments in Pacific Law

This course provides students with an opportunity to *study and debate socio-legal developments in Pacific countries that are of current significance*. It has a focus on law reform and *prepares students to contribute to law reform initiatives in their own countries in the future*.¹²

The course descriptions above, naturally, have limitations:

- They are brief and cannot, and are not intended to, outline all that is covered in a course.
- A small reference to the South Pacific does not mean that the rest of the course is not South Pacific based (an Australian ‘Contract Law’ outline, for example, may not use the word ‘Australia’ at all, yet the content may be based squarely on Australian law).
- A reference to the South Pacific does not tell us whether South Pacific material is ‘added to’ or embedded within a course.

¹¹ The University of the South Pacific, *2016 Handbook and Calendar*, 238–42 (emphasis added) <http://www.usp.ac.fj/fileadmin/scripts/HandbookAndCalendar/HandbookAndCalendar_2016_en.pdf>.

¹² Ibid 241.

- In many areas there may not be any applicable local law — yet. A course may thus rely wholly on law from outside the jurisdiction, but examine the desirability or otherwise of this area of law being introduced or further developed in the South Pacific context.

In addition, a number of elective courses supplement the core program.

It is very clear that there has been an attempt to make many courses relevant to the South Pacific. Nonetheless, it is also clear that the core curriculum as a whole shows considerable adherence to common law curricula elsewhere.

b) Practical Legal Training Program

Following on from the law degree, USP also provides a practical legal training program, the 22-week Professional Diploma in Legal Practice (PDLP). Students attend 18 weeks of classes on Laucala Campus in Fiji, and undertake a four-week placement within a legal office. Core practical training modules cover the skills and practice of criminal and civil litigation, wills and estates, conveyancing, business law, family law, and human rights. Ethics, professionalism and work skills are also covered.¹³ Although this program provides professional training for 12 South Pacific jurisdictions, course content has been heavily focused on practice in Fiji, from where most PDLP staff are drawn.¹⁴ Since a review of the Law School in 2012, the PDLP program has been ‘re-mapped’.¹⁵ Recent demands for the PDLP program to be more focused to take account of the needs of

¹³ Ibid 253–5.

¹⁴ L Taylor, ‘Final Report and Recommendations for the Professional Diploma in Legal Practice (PDLP), Faculty of Law, University of the South Pacific (USP), Suva Campus’ (Prepared for Professor Eric Colvin, Head, School of Law, University of the South Pacific, 19 July 2012).

¹⁵ The University of the South Pacific, School of Law, *Curriculum Map for PDLP Program Released* (11 February 2015) <[https://www.usp.ac.fj/index.php?id=8341&no_cache=1&tx_ttnews\[tt_news\]=2392&cHash=c1f7c98f05cf9ab0ee20209e15b76835](https://www.usp.ac.fj/index.php?id=8341&no_cache=1&tx_ttnews[tt_news]=2392&cHash=c1f7c98f05cf9ab0ee20209e15b76835)>.

individual jurisdictions have led to the recent introduction of online PDLP programs offered for students in Samoa, Vanuatu and Solomon Islands.¹⁶

The development of the USP law curriculum shows a common path in the development of legal education in former British colonies, which has created 'local' law degrees with remarkable similarities to one another in terms of structure and content. Overseas developments continue to affect the direction of South Pacific legal education, as discussed below.

4. Recent Developments: Graduate Attributes and Program Learning Outcomes

A recent development in legal education generally, and at USP, has been the move toward identifying and teaching for graduate attributes and program learning outcomes (PLOs), mentioned in the first chapter as one of the drivers of this research. The section below outlines these activities at USP to better situate the current research. However, understanding this requires a brief discussion of similar developments in Australia and elsewhere, due to their impact on the local educational setting.

It has become well accepted in the past couple of decades that education for the modern and rapidly changing world requires far more than simply the learning of discipline knowledge. There is now a belief that

[i]f graduates are to leave university with the attributes necessary for work and life, student learning outcomes must go beyond disciplinary content

¹⁶ Re Samoa, see USP Facebook page: The University of the South Pacific, *PDLP Goes Online for Samoa* (20 December 2014) Facebook <<https://www.facebook.com/USP.Team/photos/a.10150480840797393.363318.76066037392/10152534082512393/?type=1&theater>>. Information re Vanuatu and Solomon Islands PDLP from conversations with USP staff in Vanuatu March 2017 and Solomon Islands April 2017.

and include graduate attributes ... There is broad agreement by employer groups, professional bodies, the community as well as the students that the development of graduate attributes is a core outcome of university study.¹⁷

In Australia, there has been a marked move away from trying merely to instil disciplinary knowledge, and an acceptance that the emphasis must be broader. Rather than — or in addition to — the ‘knowledge’ students should gain during their university careers, moves have also been made toward instilling more general attributes, and the particular skills and attitudes needed for individual disciplines. Although not everyone has embraced the move, changes in the broader environment, government policies, and competition in the higher education sector have offered incentives for universities and law schools to move in this direction.¹⁸ Hence, although legal education may previously have ‘appeared frozen in time’¹⁹ with ‘disappointingly little reaction to the changing environment or reflection about the implications of all this for education and scholarship’,²⁰ increasingly frequent reviews, reports, stocktakes and regulations have meant that legal education can no longer afford to stagnate.²¹

¹⁷ Alex Radloff et al, ‘Assessing Graduate Attributes: Engaging Academic Staff and their Students’ (Paper presented at ATN Assessment Conference 08: Engaging Students with Assessment, Adelaide, Australia, 20–21 November 2008) <<http://www.ojs.unisa.edu.au/index.php/atna/article/viewFile/342/279>>.

¹⁸ Anna Huggins, ‘Incremental and Inevitable: Contextualising the Threshold Learning Outcomes for Law’ (2015) 38(1) *UNSW Law Journal* 264; Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association, 2007).

¹⁹ David Weisbrot, ‘What Lawyers Need to Know, What Lawyers Need to Be Able to Do: An Australian Experience’ (2002) 1 *Journal of the Association of Legal Writing Directors* 21, 35. Electronic copy available at <<http://ssrn.com/abstract=1095486>>.

²⁰ *Ibid* 35.

²¹ For example, Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Australian Government Publishing Service, 1987) (‘Pearce Report’); Craig McInnis and Simon Marginson, *Australian Law Schools after the 1987 Pearce Report* (Australian Government Publishing Service, 1994); Australian Law Reform Commission (‘ALRC’), *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (2000) 126 <<http://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC89.pdf>>; Richard Johnstone and Sumitra Vignaendra, ‘Learning Outcomes and Curriculum Development in Law’ (Report, Australian Universities Teaching Committee, January 2003) <http://www.cald.asn.au/docs/AUTC_2003_Johnstone-Vignaendra.pdf>; Sally Kift, Mark Israel and Rachael Field, ‘Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching Academic Standards Statement’ (Australian Learning and Teaching Council, 2010).

General changes in the environment within which lawyers in Australia operate have included, for example,

the application of competition policy to the market for legal services, the globalisation of the economy, the push for greater privatisation and de-regulation, the explosion of legislation, regulations, and process, the revolution in information technology and communications, the drive for greater accountability/transparency of public (and major private) institutions, the drift away from the adversarial mindset and the embrace of alternative forms of dispute resolution (ADR), the contestability of legal work for government, with much non-core work now outsourced, the increase in major client sophistication in the use of lawyers, and in bargaining over fees or the level and quality of services (and consequently much lower levels of client 'loyalty'), the blurring of the distinction between law firms and rival 'expert business services' or 'knowledge corporations', such as the large accounting firms and management consultancies.²²

In addition to the changes occurring in society generally, and in industry and the legal profession in particular, the shift in emphasis within law schools has been part of a much bigger push for education which meets the needs of the modern and constantly changing world. This is reflected in the following observation:

governments, professional bodies, employers and the wider community demand that higher education restructure and re-examine its fundamental orientation. Universities are now more competitive, strive to be more nationally and internationally relevant; to be flexible in responding to changing student expectations; to assure teaching quality and its professionalism; and to ensure the suitability of programs of study for future employment and career advancement.²³

²² David Weisbrot, 'Taking Skills Seriously: Reforming Australian Legal Education (2004) 29(6) *Alternative Law Journal* 266, 267–8.

²³ Sally Kift, 'Curriculum Renewal in Law to Meet the Needs of Global Practice: Embedding and Assessing Skills Acquisition' (Paper presented at Association of American Law Schools Conference on Educating Lawyers for Transnational Challenges, Hawaii, 2004) 1
<<http://www.aals.org/international2004/Papers/KIFT.pdf>>.

Consequently, most universities in Australia have now developed their own lists of graduate attributes, and individual schools and faculties have developed complementary lists. The latter tend to be more discipline-specific than the generic graduate attributes listed by the university as a whole, and in law schools these may be expected to include the attributes required of 'lawyers'. However, most law schools in Australia have drawn their attributes broadly, to take account of the fact that many law graduates do not work as 'legal practitioners' at all, and that even those who do so will be working in a rapidly changing environment. Similar changes have been noted in many overseas jurisdictions also.²⁴

Attempts to identify and adopt graduate attributes at USP began in 2006 when the Centre for Educational Development and Technology at USP produced a paper entitled 'University of the South Pacific: Graduate Attributes'. The paper began:

Why should USP introduce graduate attributes?

Graduate attributes have been integrated into the curricula of almost all major universities in the English speaking world. In Australia, for example, graduate attributes have been required by the Department of Education, Science and Technology in every higher education institution since 1998 ...²⁵

The paper went on to further explain the benefits of adopting graduate attributes. Graduates would be better qualified, more employable, and able to contribute more effectively to their workplaces and communities. Stakeholders would be better able to assess USP graduates, would become more closely allied and able to contribute to USP, and to the development of its academic programs. USP would have benchmarks against which to measure performance, come into line with other major universities,

²⁴ See Kift, Israel and Field, above n 21, Appendix 3: National and International Comparison Tables (including references to all other studies), 29.

²⁵ Centre for Educational Development and Technology, USP, 'University of the South Pacific: Graduate Attributes' (8 February 2006) (held by author).

and seize a competitive edge over other institutions in the region. The paper proposed the introduction of graduate attributes at USP, comprising three knowledge attributes, five skill attributes and two attitudinal attributes. The entire discussion was brief. This paper — which included reasons for the introduction of USP graduate attributes, recommended attributes, interpretation of those attributes, and the time line outlining each phase of implementation of the attributes — comprised only five pages in total.²⁶

This initial attempt to introduce the new graduate attributes was not overly successful in the short term. A review of USP undertaken by Australian Universities Quality Agency (AUQA) and New Zealand Universities Academic Audit Unit (NZUAAU) in 2008 reported:

USP states that it aims to produce motivated, high-calibre graduates who can contribute to the betterment of their communities and society and are capable of dealing with the many different contexts that will face them in the region. The portfolio made reference to USP graduate attributes and included a list of skills and qualities ‘that every graduate should have acquired.’ However, the panel found that both staff and students were unaware of these attributes.²⁷

USP acted to remedy this. Not only was a new Deputy Vice-Chancellor appointed in 2010²⁸ and given responsibility for the ‘formal development, implementation and monitoring of graduate attributes’, the USP Strategic Plan for 2010–12 included within its first priority area ‘implement[ing] graduate attributes in all courses and

²⁶ Ibid.

²⁷ Australian Universities Quality Agency (AUQA) and New Zealand Universities Academic Audit Unit (NZUAAU), ‘Report of an Audit of the University of the South Pacific’ (AUQA, 2008).

²⁸ Susan Kelly, appointed August 2010: News @ USP, *Deputy Vice-Chancellor: Learning, Teaching and Student Services* (18 August 2010) The University of the South Pacific <<http://www.usp.ac.fj/news/story.php?id=630>>.

programs'.²⁹ Such was its importance that the Vice-Chancellor specifically included this in his 2011 welcome message to staff:

This year is also when we undertake ... a fundamental re-thinking of our academic portfolio in terms of relevance; ... graduate attributes and their implementation in our curriculum; ... tight weaving of the curricula to ensure progressive development of knowledge, skills, concepts, values and preparedness for the world of work and further study.³⁰

The importance of producing graduates suited to work in the local region had already been recognised by the School of Law. Without using the language of 'graduate attributes', the School's 2006–11 Teaching Plan had identified the need to:

Undertake survey of graduates and employers of graduates to identify satisfaction of stakeholders and continuing education needs.

Rationale: In order to maintain the quality of our courses ... we need to ensure that our graduates who are entering the legal profession are meeting the requirements of professional bodies in the region. This research will also identify continuing education needs in the region.

Timeframe: 2006–2007

Performance indicators: Report of research findings; report of mandatory skills for graduates.

Undertake process of curriculum review to ensure that curriculum content is developing the skills and knowledge that graduates require.

Rationale: ... translates the findings from [survey above] into course changes. The inculcation of skills that meet the needs of our stakeholders is part of the School of Law's mission, as is ensuring that the content of all courses have a regional focus.

Timeframe: 2007–2009 (LLB)

²⁹ Ibid.

³⁰ Rajesh Chandra, *Welcome Message from the Vice-Chancellor to Staff for the 2011 Academic Year* (2011) The University of the South Pacific <<http://www.usp.ac.fj/index.php?id=10036&type=98>>.

Performance indicators: Curriculum review reports for each level of course which are tied to enabling the achievement of mandatory skills and ensuring relevance of course content to the region. These reports will contain further performance indicators for implementation of reports.³¹

Unfortunately, it appears that the first of these proposals was not carried out, and graduates and employers of graduates were not asked in any systematic way to identify their levels of satisfaction with graduates, nor were they asked to identify further graduate needs.³² An attempt was made to follow the second proposal, however, and to ensure that the curriculum was developing the knowledge, skills and attitudes that law graduates required. Doing the latter without the former was difficult. Because the first step did not take place, the School of Law needed to generate its own list of 'key skill areas' and then assess whether or not they were adequately covered in the curriculum.³³

To this end, in 2008 the School of Law held a Teaching and Learning Workshop on 'Integrating Discipline Specific Attributes into Assessment'.³⁴ The background to the workshop included 'current processes in USP to develop [a] set of generic graduate attributes and to go on to promulgate discipline specific attributes from these'.³⁵ Notes from the workshop state that it aimed 'at identifying the various skills we considered important to develop in the LLB' amongst other things. Workshop participants went on

³¹ USP School of Law, 'Teaching Plan 2006–2011' (2005) Action Plan 9, 10 (held by author).

³² I have searched for relevant research without success. If there was further research undertaken it does not appear to be accessible any longer. It was not made available to those drafting PLOs in 2011. Note also that in 2011 the Faculty of Arts and Law, School of Law, 'Annual Teaching Plan for 2011' still included 'survey[ing] past graduates to assess the relevance of the USP law degree.' (held by author). Last reference to the lack of research appears to be a criticism, the author acknowledges that the USP School of Law is chronically understaffed and under resourced.

³³ Compare this to the research done in other jurisdictions in the process of determining appropriate LLB learning outcomes. See, eg, Kift, Israel and Field, above n 21, 6–8.

³⁴ USP School of Law, 'Integrating Discipline Specific Attributes into Assessment' (USP School of Law Teaching and Learning Workshop, 2008) (held by author).

³⁵ Ibid.

to identify 19 ‘key skills’, to explain or describe the content of each, and then to survey staff of the School of Law about which of these skills were assessed in which courses.³⁶

As discussed above, beyond the Law School, USP itself was moving in the same direction with the new Deputy Vice-Chancellor having particular responsibility for this area. Her contribution was the STAR (Strategic Total Academic Review) program, which included the identification of PLOs for every program at USP. Consequently, the Law School acted to develop its own PLOs in 2011, although research into the local legal environment and the needs of graduates in the region had still not been conducted. This followed on the heels of the promulgation of Australia’s Threshold Learning Outcomes for Law. The importance of aligning the outcomes of the local law degree to these Australian Threshold Learning Outcomes had already been identified.³⁷

Academic staff of USP’s Law School drafted PLOs for the LLB, which have since been finalised as follows:

Graduates of the USP LLB will display the following:

Knowledge

Graduates of the USP Bachelor of Laws will be able to demonstrate an understanding of a coherent body of legal knowledge that is based upon the laws and legal systems of the South Pacific in an international and comparative context.

Communication skills

Graduates of the Bachelor of Laws will be able to communicate orally and in writing in ways that are effective, appropriate and persuasive for legal and non-legal audiences.

Professionalism & ethical behaviour

³⁶ Ibid.

³⁷ Email to author from Peter MacFarlane, Head of USP School of Law, October 2010.

Graduates of the Bachelor of Laws will be able to collaborate and independently manage their work in a manner which demonstrates understanding of the principles of professionalism and ethics.

Legal research and reasoning skills

Graduates of the Bachelor of Laws will be able to undertake independent research and think originally and creatively in order to identify, analyse and solve legal problems.

Ability to contribute to the development of South Pacific countries' laws and legal systems

Graduates of the Bachelor of Laws will be able to identify law reform issues in their country and in the South Pacific generally and be able to contribute to solutions.³⁸

In summary, USP has attempted to keep up with international developments in higher education, identifying the attributes which all its graduates should have, and working to ensure that the learning outcomes of each program in each discipline are clearly articulated. In some respects, however, it has needed to do so without the necessary research base to ensure that its aims are well suited to the educational needs of the region. PLOs have therefore been developed against a background of outcomes identified elsewhere, but without a clear picture of the needs of local graduates.

5. Conclusion

While transformative and locally focused aims were originally articulated as an objective of the USP law degree, in practice it appears that, as for most law degrees in newly independent states, it has tended to follow a British pattern in terms of both organisation and content. Viewing the South Pacific law degree alongside some of

³⁸ School of Law & University of South Pacific Policies, LLB Programme Outcomes, Moodle Book (2015) (held by author and provided in Appendix 2). The appendix also shows details of what will be assessed in each area to ensure achievement of these PLOs.

those introduced to other former colonies — whether predominantly Indigenous such as Africa and Papua New Guinea, or predominantly non-Indigenous such as Australia and New Zealand — has demonstrated that all have the colonial common law heritage as their central point. This legacy endures, leading to ongoing similarities between the law degree at USP and ‘common law’ degrees elsewhere.

This section has also shown that overseas educational developments continue to influence South Pacific legal education, as exemplified by the current structure and content of the law curriculum, and the recent moves toward educating for graduate attributes and PLOs.

Overall, this chapter has shown that there is a desire in the South Pacific to create a law degree suited to local students, local jurisdictions and the local region. Additionally, there is a desire to keep up with educational developments elsewhere, both in legal education, and more generally. These aims require a relevant research base upon which further developments can be built, and the case study presented in the following chapter will hopefully be a useful first step in providing that foundation, at least for the Melanesian states of Solomon Islands and Vanuatu.

CHAPTER SIX: LAWYERS' WORK, PERCEIVED NEEDS, AND THE LEGAL SETTINGS OF SOLOMON ISLANDS AND VANUATU

1. Introduction

The preceding chapters have sketched the broader context of the South Pacific, and the pressures and hopes which led to the development of the Bachelor of Laws (LLB) degree at the University of the South Pacific (USP). The continuing juxtaposition of traditional life and organisation alongside introduced systems of governance, law and legal education highlight the potential for mismatches to occur between the law curriculum and the educational needs of local lawyers. Research might help to determine whether there are mismatches, and, if so, suggest possibilities for better alignment.

This chapter presents a case study designed to solicit a better understanding of the local legal environment within which law graduates work. The study was done with a view to providing an information base that can be drawn upon to assist, in a practical way, the continuing development of the legal education offered in the South Pacific. It includes an account of the work of local lawyers, their perceived needs, and the settings in which they work in Solomon Islands and Vanuatu. It does not attempt to cover every aspect of these, but only those aspects most relevant to legal educational needs.

The chapter is broken into four parts.

The initial two parts of this chapter draw mainly from interviews with lawyers and others working closely with lawyers in Solomon Islands and Vanuatu. Part A outlines

where participant lawyers work and what they do, how they learned to be lawyers, and the opportunities they anticipate for further learning.

Part B looks initially at the knowledge, communication skills and professionalism which participants perceive to be required for work in the local legal environment, and then deals more briefly with other needs. At this stage, reference to additional literature is used only where necessary to explain matters arising from the interviews. Otherwise, this is deferred until the following part.

Part C draws on a broad range of documentary and other sources to flesh out the picture of the local setting, and to explore further aspects of this which may impact upon lawyers. This provides greater context to the views and experiences of study participants reported in the previous sections, and highlights many of the challenges which lawyers in these jurisdictions face.

Part D brings together and synthesises the findings outlined in the previous parts to provide a more integrated picture of the whole. The implications for local legal education which can be drawn from this case study, and suggestions for moving forward, will be the subject of the following chapter.

This long chapter provides a substantial amount of detail about the issues canvassed. It is broken up into four main parts to tease out different facets of the discussions with participants and the further research. However, the four parts are deeply interrelated and concerns overlap and intertwine. It would misrepresent the discussions and oversimplify the issues arising if the case study were broken up into smaller, separate chapters.

Further initial matters also need noting. Regarding terminology, for the purposes of this study the terms 'local' and 'foreign' are used to differentiate between people or things originally from the South Pacific Islands and those originating elsewhere, particularly in terms of research participants. For the purposes of this study the term 'lawyer' includes anyone with a law degree. The term lawyer, and the topic of the study itself, are not confined to what might elsewhere be called 'practising' lawyers. Where tertiary education is readily available, many people may have a law degree but not take on roles which require its use. Conversely, in Solomon Islands and Vanuatu, tertiary education is rare, and legal education even more so. In these jurisdictions it is likely that graduates will be called upon to use their legal knowledge and training whether or not they are working as 'practising lawyers', as will become apparent from the material reported in this chapter.

Secondly, readers may find that the data is reported in a less integrated fashion than is common in case studies, but this is intentional. I want to distinguish and acknowledge the importance of the views of local participants; hence, their views are distinguished and generally presented before the views of other study participants. I wish also to present the views of all study participants, where appropriate, before moving on to data drawn from documentary sources. This written material is extremely important in helping to understand the local legal context, but, given that much of it is authored by foreigners, and has been written for purposes extrinsic to legal education, I hope that readers will understand the interview data on its own terms before this additional material is presented.

Thirdly, as discussed in Chapter Two, the work is interpretive and does not aim to prove 'what is'. Rather, it is a best attempt at providing a valid picture of the

contemporary legal environments of Solomon Islands and Vanuatu within which local law graduates learn and work. This provides an opportunity for local people to have their own views and experiences included in a portrayal of the local environment, and provides an opportunity for others to deepen their understanding of the local context. Hopefully in the longer term the work will also assist educators to align legal education more closely to the needs and aspirations of local jurisdictions.

Unless otherwise referenced, all words in italics are drawn directly from interviews with study participants.

2. Part A: Lawyers' Work, and Learning to be a Lawyer

While the overview of participants in Chapter Two listed the areas within which participants worked, a more detailed picture of their many roles helps to flesh this out. In the interviews conducted as part of this study, participants told me the kind of work they did, the areas of law involved, and the main activities required to carry out their various roles. The following demonstrates the breadth of the pool of study participants, as well as illustrating the many types of work undertaken by lawyers in Solomon Islands and Vanuatu.

a) Lawyers' Roles

Local lawyers worked in both public and private sectors, in non-government organisations (NGOs) and as academic lawyers. In the public sector, participants held many different roles, including high-level government, judicial and statutory offices. Some held positions which focused directly on government matters, such as advising and supporting government, members of parliament and parliamentary committees; policy development and law reform work; and legislative drafting. Others undertook

litigation and transactional work on behalf of government and members of parliament. Others working in the public sector had minimal direct dealings with government, and worked as prosecutors in criminal matters, or in the offices of the public solicitor (similar to legal aid in some jurisdictions).

Local lawyers also worked as legal officers for statutory bodies such as utilities regulators and ombudsman's offices, and some worked for non-government organisations such as Transparency International, the United Nations Development Program and the World Bank, either within the organisations themselves or placed by them with local agencies.

Local lawyers in the private sector ranged from sole practitioners through to employees and partners of larger local and 'foreign' or 'expat' firms, as well as in-house lawyers. There was little evidence of specialising amongst those in private practice, but of those few who did specify a particular area, one worked in *anti-corruption*, two in *civil*, and two in *commercial* areas. Most commonly, private sector lawyers were general practitioners undertaking a broad range of work such as contract, conveyancing, family, employment, resources and maritime law, and civil and commercial litigation. One participant, for example, described his work as *general practice, mostly resources, forestry, mining, fisheries, conveyancing and commercial disputes, and a little bit of family law*. Foreign participants noted this breadth in relation to local lawyers, including both government lawyers — *everyone is involved in everything, juniors specialise but still get involved in all things* — and private lawyers — *they need good generalist understanding, not overly specialised. There are few lawyers who could have anything other than general practice here*.

Foreign participants also worked in each of the areas referred to above: public and private legal sectors, NGOs, and as academics in tertiary education.

b) Lawyers' Work

Participants explained the activities they did in their work as lawyers in Solomon Islands and Vanuatu. Although a very wide variety of roles were reported, it seems that those working in the legal sector tend to use the same main skills in their work regardless of role. According to participants, the most common activities undertaken involve communicating orally and in writing, court work, and research.

Most local participants reported communication of one kind or another as a major part of their work. They engaged in *written communication*, which included *drafting correspondence, agreements, contracts, commercial contracts, employment contracts, letters of advice or complaint, reports, amendments and court documents* such as *charges, summonses, pleadings and submissions*. Likewise, most participants reported using *oral communication*, including for *interviewing, negotiating, advising, talking to clients, community education and consultations, presentations, networking, facilitating at meetings or workshops, conferencing and reporting to clients*. Participants also needed to *explain legislation, explain the law in layman's terms and explain court processes to clients*.

Court-related work was frequently mentioned by local lawyers, regardless of their job title. Participants reported undertaking *civil litigation, complex litigation and pre-trial preparation* including *evaluating evidence, evaluating a case and drafting court documents*. Others reported undertaking *court work, court appearances, prosecutions, advocacy, attending court, attending call-overs, running trials and making oral*

submissions. Although much of this work involves or overlaps with 'communication' (above) and 'research' (below), participants frequently mentioned 'court work' as a distinct area of activity.

Research was also frequently required of local lawyers. This included looking for *local and foreign cases, legislation, delegated legislation, subsidiary information and secondary sources*, and *researching evidence* for specific matters.

Less commonly, local lawyers mentioned engaging in *management* activities, including *managing staff, planning and managing projects, case management, time management, 'following up', organising and administration*.

The following activities were each mentioned by only two or three local participants but are included for the sake of completeness:

- guiding others by: *teaching, training, supervising*;
- thinking: *logic, reasoning, analysis*;
- working with technology: *computer skills, database*.

Individual local participants mentioned *developing policy; applying rules or law; interpreting bills, standing orders and the constitution; conveyancing; categorising cases (for indexing); and applying financial literacy*.¹

Foreign participants also commonly reported that their work involved communication, court work and research. However, the most commonly reported activity amongst foreigners was giving guidance of one kind or another as part of their work. While only three local participants had mentioned *teaching, training or supervising*, many foreign

¹ Semicolons separate responses of individual participants.

participants were engaged in *mentoring, teaching, coaching, supervising, instructing, training, motivating, building confidence, relationship building, assisting local lawyers, supporting lawyers in court, giving guidance in ethics, and capacity building*.

Overall, foreign participants tended to be more experienced than local participants, and hence were likely to have more responsibility for leading others.² In addition, many foreign lawyers in Solomon Islands and Vanuatu were there to do exactly that; that is, they were employed specifically in capacity-building roles, as Advisers, or in other development-related work.

The make-up of the legal sector, and the knowledge, skills and attitudes which local lawyers perceived to be necessary to perform their work, will be discussed in more detail later in this chapter. For now, having noted the diverse roles which local lawyers, especially, undertake, and the breadth of work often involved in those roles, I move on to discuss where and how these participants learned to be lawyers.

c) Observations Regarding Foreign Involvement

When local participants were asked about how they became lawyers and how they could develop further, they identified university studies, workplace learning and external learning. While some credit was given to their initial studies and to the guidance of senior colleagues generally, the guidance offered by aid and other externally funded programs was mentioned most frequently and most positively. Advisers, foreign mentors, and external placements and training courses were repeatedly cited as sources of learning and development for local lawyers. In addition, some local participants suggested that more outside assistance would be welcomed:

² See length of experience of local and foreign participants in Chapter Two, 4 b) i).

Australian Advisers can help us to improve our skills.

Solomon Islands needs more senior lawyers from overseas to mentor locals, Australian lawyers doing workshops on advocacy, mock trials and so forth to build up Solomon Island lawyers' confidence.

[Juniors] need AusAID Advisers to help them develop those skills. We need someone to come and help. We can get [skills] slowly but we need help to get them faster with an expert from AusAID. I have already asked them to give us an expert. Also we need an expert to teach us to write an appeal submission, the Court of Appeal expects a higher level.

There are opportunities through AusAID, I may go overseas to get skills.

I've asked the Attorney General for support for further study and development. Maybe in Australia, UK or West Indies.

Some local participants even saw externally funded programs as the only opportunities available:

In practice there's not much opportunity except NZ aid workshops, Vic Bar and so on.

No other avenues. There were opportunities before when there was an AusAID project in place, but not now.

There's limited opportunity here, there's the Vic Bar advocacy course but little else.

Training and development are only available when Australian Advisers are in the office, not otherwise.

In-house CLEs [continuing legal education] are when Australian Advisers are there. Our Adviser organised a Magistrate Courts' team, meetings and feedback and improvement. But after [the Adviser] left there's no

Magistrates' team functioning anymore. That really hinders our performance in the Magistrates' Court.

Overseas funded training is discussed later in this chapter.

d) Learning to be a Lawyer, and Opportunities for Further Learning

Participants discussed how they learned to be lawyers, and the opportunities they had to continue their learning.

i) Undergraduate Law Studies and Practical Legal Training

Some participants reported that their undergraduate studies and practical legal training (the Professional Diploma in Legal Practice, PDLP) had helped them significantly, or had at least set them on the right path:

Law School gives essential grounding.

Law School enhanced my skills.

I more or less left university with those skills, because I learned from some very highly trained academics.

I learned [lawyers' skills] at university, amongst other places.

I used the skills from law school in practice, then got corrections.

I learned lots in PDLP.

PDLP prepared us really well for what is outside.

My skills were developed during PDLP.

I learnt interviewing in PDLP, and advocacy also.

I learnt procedure at PDLP but got much more insight into that in practice.

However, others had quite different views, and most participants did not mention undergraduate law studies or PDLP at all in terms of developing their abilities as lawyers:

The LLB [Bachelor of Laws] did not prepare me for work.

I did not learn these skills at university.

Six months is too short ... You don't see the importance of what you do in PDLP until you're practising.

A local and a foreign participant, each of whom supervise more junior lawyers, questioned the value of the practical legal training currently available:

PDLP helps, but makes a very small difference.

There's a fractional difference only between students who do or don't do PDLP. It's mainly that they're less confident if they haven't done it.

A general concern relating to both the LLB and PDLP was the failure to prepare graduates for individual jurisdictions, with some participants suggesting that both programs are currently overly Fiji focused:

Emalus [in Vanuatu] gives precedence to Fiji customs, it's more traditionally Fijian at Emalus.³

Different countries have different needs, different levels, and USP needs to take that into account. Solomon Islands may be different from Fiji.⁴

I was very disappointed at PDLP. Everything was from Fiji, nothing from anywhere else. They say that's because it was initially intended only for Fiji

³ Emalus Campus in Port Vila, Vanuatu, houses USP's School of Law.

⁴ A concern that common training would lead to homogenisation was noted as early as 1992 by C Guy Powles, 'Learning Whose Law? Legal Education in Plural Societies. Choices for the Pacific Island Region' in Commission on Folk Law and Legal Pluralism, Papers presented at the Congress at Victoria University of Wellington, August 1992 (Law Faculty, Victoria University of Wellington, 1992) 256.

*students. But it's been years now, why haven't they changed it to take account of other places also?*⁵

*PDLP's focus is Fiji and you don't learn the position elsewhere. You're encouraged to learn your own jurisdiction in your own country.*⁶

In terms of preparation for the workforce, the benefits of academic learning appeared, from participants' comments, to be greatly enhanced by opportunities to experience practical or 'real' legal settings; *you can't learn it by being told, you need practice*. Law Clinic, work placements and mooting were most commonly mentioned in this regard.

Law Clinic

Participants reported that Law Clinic, an elective subject run through the Community Legal Centre (CLC), contributed to their preparation for the workforce:

From debates, moots and the Community Legal Centre, I was not fully equipped but I had an idea at least of some of the skills needed in practice.

I got some insights from the Community Legal Centre, it would have been harder without that.

Participants mentioned how these opportunities had helped them to develop practical skills through exposure to the legal world: *the Community Legal Centre gives you first-hand experience of what is really out there*. Other participants spoke positively of the opportunities the CLC offered, particularly in terms of exposure to the *real world* and to *real clients*. A foreign supervisor also mentioned that amongst local lawyers in practice, *you could tell the difference between those who'd done Law Clinic and those who hadn't*.

⁵ A foreign participant who was formerly an instructor in the PDLP program stated that PDLP prepares students very well for practice. Her view was that PDLP may be too Fiji focused, but that it need not be.

⁶ Note that complaints about PDLP not preparing students for other jurisdictions resulted in the introduction of a Samoa-specific PDLP program in 2016, and PDLP programs for each of Solomon Islands and Vanuatu in 2017.

The participants interviewed for this study who had undertaken Law Clinic had done so in a fully functioning Community Legal Centre, managed by a practising lawyer and running its own legal matters. Clients were referred to the CLC by the Public Solicitor's Office (PSO)⁷ where there was a conflict of interest or the PSO was otherwise unable to deal with the matter.⁸ This clinical course required students to attend the CLC one day a week where they dealt with clients, managed their own files, and undertook practical assessments, all closely supervised by a practising lawyer.⁹

Despite the positive contribution which the fully functioning CLC made to preparing graduates for practice, many of the CLC's functions have since been cut back.¹⁰ Students attending Law Clinic are now involved in offering advice to clients on a one-off basis, but the CLC (now the Community Law Information Centre — CLIC) no longer opens files nor runs ongoing matters, as will be discussed in Chapter Seven. A Law Clinic elective is also offered in Fiji, but is based on a work placement model similar to that described below, rather than a community legal centre.

Work Placements

In addition to Law Clinic, participants also found work placements valuable in developing an understanding of practice, and in helping to make sense of academic learning:

⁷ Offices of the Public Solicitor provide advice and representation to those unable to access private lawyers.

⁸ Edward Hill, 'The USP Community Legal Centre: Combining Legal Education and Legal Services in a Developing Island Country (Working Paper)' (2004) 8(1) *Journal of South Pacific Law* <<https://www.usp.ac.fj/index.php?id=13270>>.

⁹ Michael Blaxell, 'Reflections on the Operation and Direction of the USP Community Legal Centre, Port Vila' (2014) 2014 *Journal of South Pacific Law* A-1, A-3 <https://www.usp.ac.fj/fileadmin/random_images/home_middle_banners/emalus/JSPL/2014/Blaxell.pdf>.

¹⁰ For information on its current role and status, see The University of the South Pacific, Faculty of Arts and Law, *Overview of the Community Law Information Centre* (17 July 2017) <<https://www.usp.ac.fj/index.php?id=8402>>.

I failed Evidence. I'd never been to court, only after graduating did I go to court. Then I did a placement and went to court and found everything, from beginning to end, is evidence! When I came out I said, 'My goodness, I should have gone to court before.' I tell the students they must go to court.

One lawyer who wished she had had such an opportunity stated that this would have been valuable, even if supervision or guidance within such placements was minimal: *the Community Legal Centre was okay but it was still a part of Law School. It would have been good to go into a real workplace ... I would have loved that ... that's the workforce, it opens your eyes.* A participant who had undertaken a placement in Police Prosecutions reported:

I was able to present cases in court. I did about 10 cases with leave to appear, and loved it ... We did it much better than the police officers who don't have the background, and who have a huge backlog, and when they see us coming they're so happy. I sought help from the Police Prosecutors and they'd give one or two directions but there's no time. There's just too much work. There are no lawyers there, but previously there was one expat.

Those taking the Law Clinic elective in Fiji do so through placements, and placements are mandatory for PDLP students. Australian funding has enabled the introduction of a placement program where students from Emalus Campus may apply to be placed in legal offices around Port Vila.¹¹ While it is hoped that a broader range of placements will become available, the program initially offered only a limited number of placements in public sector offices.¹² These were coordinated by a local lawyer recruited by the Australian donor, and did not attract course credit. More recently, the

¹¹ Personal conversation between author and Arthur Faerua, Program Administrator of the Vanuatu Law Students Internship Program (Port Vila, Vanuatu, September 2013).

¹² Ibid.

placement program has become increasingly incorporated into the CLIC and Law Clinic program, which it is hoped will provide it with ongoing sustainability.¹³

Mooting

The third experiential activity commonly reported as helping participants prepare for the workplace was mooting:

Moot courts and exercises really helped.

Mooting really helped. It also gave us confidence.

Moots helped in advocacy, although in real life it's a little bit different. We did mock trials at PDLP. I learned a lot to help to start to know what to do in trials.

Learning how to present arguments, knowing they'll be doing something similar in real life, especially with real professionals, it gives students confidence, lets them know what to do.

The mooting program offered at USP is an optional extracurricular program, offered annually on a not-for-credit basis. Students moot against one another, sometimes against another USP campus (eg *Emalus v Laucala*), occasionally against other universities, or even against teams from New Zealand as part of the biennial 'Law and Culture' program. In addition, mooting is available as an assessment item in some courses such as Advocacy. Many participants suggested that mooting should be a compulsory part of the law degree, a matter taken up again in the following chapter.

ii) Opportunities in the Workplace

USP offers a legal education with many aspects common to legal education in overseas countries, including a four-year law degree, optional mooting, clinical and placement

¹³ Email to author from Natalie David, Technical Director of Strettem Rod Blong Jastis Partnership (Vanuatu), 14 April 2016.

programs, and a practical legal training program. Most participants, however, did not connect the development of the skills and abilities they used in the workplace with their undergraduate or PDLP studies. They were more likely to report having developed these skills and abilities after completing their university studies and commencing work. The subsequent learning reported to occur in the workplace ranged from somewhat structured to entirely informal, and from top-down to self-directed.

Guided, Supervised or Structured Learning

While undergraduate law studies and PDLP were of some assistance, participants more commonly reported developing their legal abilities in the workplace, partially through their own initiative and partially through supervision and guidance.

Local participants frequently said they had learned by combining their own observations with direct guidance from more senior people, who may be local or foreign. Public sector participants reported:

I work with seniors, get directions about where and how to go about it, observation of more senior staff. Assistance of others more senior and experienced, look and learn.¹⁴

I learned by observing more senior lawyers, and from the more senior lawyers in my own practice.

Senior lawyers tell you what to do, what is expected of you. First you observe a senior lawyer doing this. I observed and listened and watched and learned in civil and criminal matters, then I knew how to do it.

¹⁴ Melanesian learning styles have been noted by Pacific scholars to include 'observation, imitation and trial and error rather than verbal instruction, the dominant strategy in the classroom': Konai Helu Thaman, 'Towards Cultural Democracy in Teaching and Learning with Specific References to Pacific Island Nations (PINS)' (2009) 3(2) *International Journal for the Scholarship of Teaching and Learning* art 6, 2.

My boss is a good lawyer ... He is good, he comes around, and we can discuss with him. We can ask how to do things. Six or seven of us share one room, and in the middle is a big table which you're not allowed to put books or work on. The table is for discussion. At [named government department] they're really helpful. If you need something they stop and help.

In the private sector, lawyers also reported learning through a combination of guidance from others and their own observations, as well as some more general offerings, formal or informal:

I learn from my boss correcting me, but also by doing it myself. I can ask questions, I have a good boss, I observe and ask questions. I go to court to observe, and my boss tells me what I should learn.

[Named lawyer] is my supervisor. I go with him to court and watch him, and when we leave he says 'today's lesson is X'. He is coaching me to do these things in court.

In this firm we have four partners who are senior practitioners, some of whom have practised overseas also. They comment on work informally, and sometimes we have an in-house semi-formal CLE. Usually one partner tells the others about an issue that's come up.

The firm has put in structures to teach the young ones. Each Friday at 3:30 they close up shop and conference the cases they've had that week and what's coming up the following week. Senior lawyers talk about their experiences, difficulties, and young lawyers can talk also. Otherwise experience goes to waste because there's no-one to pass on that knowledge. There is such a wealth of knowledge in the office and CLEs are rare. In the conference they can talk about legal argument and processes. Administrative staff come and can talk about billing and so on, paralegals might talk about the difficulty of getting documents signed or served. Everyone likes conferencing.

Local participants who were or who had been in the public sector commonly reported that their competence as lawyers had been developed with the help of those involved in overseas aid programs, including *help from RAMSI* (Regional Assistance Mission to Solomon Islands), and *short term Advisers, like VLSSP* (Vanuatu Legal Sector Strengthening Project). These kinds of aid-funded support programs provide numerous professionals to Solomon Islands and Vanuatu to work in capacity-building roles.¹⁵

Participants reported that such programs helped them to develop in the workplace:

I trained myself by reading and researching, and with the help of short-term Advisers.

Advisers, mentors tell us, most of the time they tell us to be more confident, and we get more confident with repetition.

I had a formal [foreign] mentor who would show me how, check my work, and was also there to ask questions of.

Friday meetings — a staff member presents, and then discussion — the introduction of this was supported by an Adviser.

As a magistrate I had mentoring from overseas lawyers.

Advisers also arranged in-house CLE for public sector lawyers:

We have CLE often, in-house, by Advisers.

We have CLEs every Friday, senior lawyers and Advisers outline the training schedule and Advisers help out. They bring in outside people. Trainings have been good.

¹⁵ Discussed in more detail in Part C of this chapter. Law and Justice sector strengthening programs have been in place in both countries for a number of years in different guises. VLSSP has been superseded by Vanuatu Law and Justice Partnership (VLJP) 2012–2016 and Vanuatu–Australia Policing and Justice Program 2017–2020, and this part of RAMSI has been superseded by Solomon Islands Justice Program (SIJP) 2013–2017.

The practice manager is an Adviser and arranges CLEs about every month. They give a lecture on a special topic. You can email them and ask them for a topic. Also one Wednesday a month they have an office meeting ... and that is when requests for CLEs will come up. In-house CLEs are when Australian Advisers are there.

Local participants were generally positive about the help received from foreign lawyers.

I get feedback from my supervisor which has really helped a lot. The Australian supervisor comments, gives feedback. I did a placement at [named government department] and there were lawyers there from New South Wales that really helped. The sessions we did with Australian lawyers, we got feedback straight away, and they really helped. The expat lawyers, they do tutorials every Friday (or fortnightly) and that was helpful as well, just to keep everybody on their toes, just to keep everyone sharp.

Another participant had had an academic mentor:

I was lucky because I had a [foreign] mentor, and did things collaboratively with the mentor for two or three years. I had opportunities because experienced people led the teams and let me be part of the team and get involved.

However, for each participant who spoke positively of receiving guidance from local or foreign supervisors or from structured training programs, there was another for whom no such assistance was available, as illustrated below.

Self-help, Unstructured

When asked how they had developed their legal skills and abilities, many lawyers in both public and private sectors of both Solomon Islands and Vanuatu referred only to teaching themselves. Many had learned predominantly through practising, with little help from others:

by doing it;

through experience;

hands on experience, much more informal than structured;

I trained myself by research and reading;

by attending court and doing court work;

For me it's a trial and error kind of thing and one that will come with experience;

It was hard. It was hard. I didn't have any mentor, someone to guide me.

Local participants most commonly anticipated that future opportunities for learning would mainly come from observation, practice, repetition and experience. Generally, they saw the opportunity to develop further knowledge and skills as very much self-driven, and mentioned that getting help from others would usually be left to the lawyer's own initiative:

Further opportunities? Only by doing it. There are no other avenues. Now there is no Adviser we do our own research and discuss it with lawyers in the office, see if others know the answer.

I talk with magistrates and judges, asking them questions. Watching, observing other lawyers.

I observe other senior lawyers in court, you can ask for guidance from [seniors] but nothing formal.

You can ask a senior lawyer for help, but senior lawyers are only 3–4 years out, others leave when they get the experience.

If you have difficulties you can approach more senior people.

I ask senior Advisors and lawyers, they know that I'm the question type. They like it. I just ask anyone to assist. They're happy to help because not many lawyers ask questions.

There's no time to teach/mentor, the senior lawyers are busy with their own cases. You could talk to them only if you have questions about procedure etc but in terms of preparing your own case, you're on your own.

Most senior lawyers don't have time to talk to people for free — most senior lawyers are in private practice ... Senior public servants don't offer ... but may do so if asked.

In one office *the principal and practice manager may give informal training*, and in another informal opportunities for discussing work may occur outside the office, for example, *we can discuss cases after working hours in the nakamal*.¹⁶ However, not even informal guidance was available to all. Some participants had no legal supervision:

*I'm the only legal officer. I have no supervisor with a legal background.*¹⁷

There's no senior supervisor, the main supervisor is a paralegal.

How I learn? I read the Act to guide me, and there are staff [overseas] I can ask. My manager and the registration officer don't have law backgrounds.

These participants worked for a utilities regulator, an NGO and a statutory office, respectively, and each had fewer than three years legal experience.

Supervision could also be an issue for private practitioners:

It was very complicated, very hard, very difficult. There's no time, especially in private firms, there's no time to do CLE in the office because time is

¹⁶ A local meeting place for socialising and drinking kava, in urban areas somewhat equivalent to 'after-work drinks' in Australia.

¹⁷ While the lack of legal supervision is problematic, in this case there were other benefits: *my skills were honed under the supervision of the company chief financial officer. She challenges my perspectives on the law which makes me see things differently.*

money and they need to get paid so there's no time to teach a young solicitor. Learning is time-consuming and thus costly. The boss instructs, the boss says read all new cases, get procedures and rules. The boss teaches and supervises on a minimal basis, depending on the requirement of clients, that is, depending on whether he has time.

In my first two weeks I was getting familiar with court forms and how to draft documents ... After two weeks my boss left me by myself in the office for three weeks, while he went to [an outer island]. I had to deal direct with clients, manage everything, manage the office, manage clients. The first week I felt like crying every day, but the second week was better. [The outer island] had no phone reception so I couldn't contact him.

Some lawyers in private practice also felt that they missed out on aid-funded learning opportunities:

There is not much opportunity for skills development in private practice, mostly only government lawyers have opportunities for travel, to develop ...

For private firms most training is from look and learn, we don't have access to training like government lawyers.

In summary, participants reported experiences of learning and developing within their workplaces, sometimes in a formal manner but often also through informal means. A great deal of the formal learning, guidance and supervision resulted from aid-funded programs, and the presence of foreign Advisers, and other mentors and supervisors from overseas. For some participants, feedback and informal guidance was available if sought. However, supervision was not available to all, or at all times, and may be less available to private practitioners than to those working in the public sector. Supervision and guidance, when available, was used in conjunction with the more commonly used self-initiated learning through observation, imitation, trial and error, and experience.

Having looked at the opportunities participants reported for learning and development within their workplaces, we now move on to look at external opportunities for further learning.

iii) Opportunities Beyond the Workplace

Some participants reported potential opportunities for further development as lawyers arising from beyond the workplace, including through postgraduate studies, CLE and externally funded programs.

Postgraduate Studies

Only two local participants mentioned postgraduate studies as having helped them to develop the knowledge or skills they used most often in the workplace. When looking ahead to further opportunities, postgraduate studies were again scarcely mentioned. Few local participants mentioned the opportunity to take *more USP courses*, or to *enrol at USP centre or online*, although one said that opportunities for junior lawyers to develop further knowledge or skills were *unlikely unless they take additional courses*. Three local participants mentioned the possibility of undertaking the Professional Diploma in Legislative Drafting offered by USP.

USP offers diplomas and coursework master's degrees, as well as offering higher degrees by research. In addition to a Master of Laws degree, it offers a Diploma in Legislative Drafting, and a Diploma and Masters in Environmental Law, but enrolments are small. Local students occasionally undertake postgraduate study overseas, most commonly in Australia or New Zealand. Those undertaking postgraduate study are generally supported by scholarships from their own governments or from overseas aid donors. Overall, however, further university study was rarely mentioned as an avenue for further learning or development.

Continuing Legal Education (CLE)

In-house CLE programs are included above as 'opportunities in the workplace', as they occur in, and are limited to, individual offices. In the present section, the term CLE refers to training outside the workplace, which is not limited to participants from one office. However, some outside CLE programs may still be limited, for example, to public sector lawyers, although there has been an attempt to broaden their reach.¹⁸ Many local lawyers suggested that CLE events could afford an opportunity for developing further skills in the future, although CLE events in both Solomon Islands and Vanuatu had tended in the past to be irregular and haphazard. There had been proposals and requests made over a number of years for CLE programs, and a number of individuals and groups had been working toward formalising their introduction.¹⁹ Many participants spoke positively about the few CLE events which had been held and which they had attended. However, in both Solomon Islands and Vanuatu there appeared to be difficulty in getting individual lawyers and organisations to support CLE events, whether through attending them, presenting at them, or encouraging them. Even planned CLE events sometimes simply fell through:

There was meant to be a big legal community and legal education event at [named place] with all lawyers, Law Society and so on, to learn about what the new rules meant. But it didn't happen.

¹⁸ Personal conversation with Rodney Kingmele, President of Solomon Islands Law Society, November 2011. See also, eg, the Victorian Bar Advanced Trial Advocacy Workshop in 2011 which was attended by Solomon Islands Bar Association members from both the private bar and government legal agencies: 'Victorian Bar workshop a success in the Solomon Islands' 2011 Issue 3 (October–December) South Pacific Lawyers' Association *newSPLash* 12 <https://docs.wixstatic.com/ugd/0217f9_8b9ed8f97907487ab0535c89320a7286.pdf>.

¹⁹ An Australian Adviser noted that *we've received proposals from the Attorney General's Department and the Bar Association for CLEs, wanting money to support CLEs.*

In Vanuatu, mandatory CLE was introduced in 2011, with a two-day CLE program to be organised each year by the Vanuatu Law Society.²⁰ Participants who had experienced the new mandatory CLE program saw it as a great opportunity, anticipated to be more readily available and more useful in the future:

Vanuatu Law Society CLEs by judges from Australia. In 2013 we had three days. That was really helpful, we learned new ways.

2013 CLE with judges was good for advocacy skills, now we're having more regular CLEs.

While CLE remains mandatory in Vanuatu, in practice the CLE program has not run recently.²¹ In Solomon Islands, CLE is also not broadly available:

There is little available locally ... CLEs are rare although the Bar Association tries from time to time. There are some seminars done by the Bar Association, open to all lawyers.

Very few participants in Solomon Islands referred to seminars run by the Bar Association, or other external CLE events, as opportunities for further learning. One local lawyer mentioned that while in-house CLE events are available and compulsory for lawyers in particular offices, those without compulsory CLE may choose not to attend external programs, even if offered:

You can't force everyone to attend, just encourage. If experienced local lawyers would help out with teaching other lawyers also that would be good. Maybe if they can play an active role ... and actually teach, then perhaps lawyers would be more likely to show up. Experienced lawyers

²⁰ *Vanuatu Law Society Act 2010* s 4. Section 4 requires the Vanuatu Law Society to establish and administer a CLE program, and mandates 10 hours attendance per year for lawyers.

²¹ The Vanuatu Law Society may not be functioning at present: 'There is currently no law society to fulfil the role of regulating the legal profession or providing continuing legal education.' Australian Government Department of Foreign Affairs and Trade, *Stretem Rod blong Jastis mo Sefti (SRBJS): Vanuatu–Australia Policing and Justice Program 2017–2020, Program Design Document* (August 2016) 10 <<http://dfat.gov.au/geo/vanuatu/development-assistance/Pages/improving-community-safety-resilience-vanuatu.aspx>>.

should learn that criticism is actually constructive and required. Some experienced lawyers may not attend because they're worried about being shown-up, they're not confident.

A Vanuatu participant also noted non-attendance: *CLEs are usually only attended by young practitioners. Seniors think they know it all.*

In terms of topics, one lawyer in Solomon Islands suggested that *it may be better not to have a wide variety of CLE courses due to resources and availability. CLEs should reflect what practitioners need on a daily basis.* A participant from Vanuatu noted the need for *CLEs not just in law, but also in management training, and admin training.*

In neither jurisdiction had CLE been a major force in the development of lawyers, but it was very broadly supported by participants as having the potential to be extremely beneficial. Participants from both Solomon Islands and Vanuatu reported a desire for an orderly, regular CLE program available to both public and private sector lawyers, and which would use the knowledge and expertise of more senior local lawyers, amongst others. On that front, it is noted that judges were actively involved in Vanuatu's mandatory CLE events, while one foreign Adviser in Solomon Islands was disappointed that there *the judiciary would not take part [in CLE], they didn't feel it was their role.*

External Programs

External programs provided by aid donors or other outside bodies were the most commonly cited avenues for the further development of local lawyers. All mention of these programs by local participants was positive. They mentioned opportunities to learn, for example, from various Australian placements such as the Victorian Bar Readers course, advocacy skills training with the Queensland Bar, twinning and

training arrangements, overseas conferences, occasional overseas-funded CLE programs, and various programs made available through the Pacific Islands Law Officers' Network (PILON). Participants also mentioned the Asian Development Bank and a number of UN (United Nations) agencies providing occasional opportunities for further development.

e) Views of Foreign Participants

Like local participants, foreign participants rarely mentioned university studies, undergraduate or postgraduate, as preparing local law graduates for the workplace, or helping them to develop further. One participant suggested that local lawyers should be given an opportunity to do more relevant postgraduate study, *not to do a whole Masters, but to do the courses which would be relevant to this jurisdiction*. Another saw postgraduate courses as inappropriate, when lawyers really needed *practical experience*, and needed to develop *at the coalface*.

Foreign participants reported that their own development as lawyers was primarily a result of workplace experience, which included close supervision, instruction, feedback, guidance and mentoring from experienced senior people. Foreigners saw this kind of supervision and guidance in the workplace as having the greatest potential to develop local lawyers, suggesting that local lawyers learn best from:

being corrected, supervised, by shadowing, assisting;

*hands-on mentoring, correcting letters, teaching administrative skills,
practical hands-on instruction;*

making mistakes, by doing things well, by doing things over and over again;

doing it over and over again. Individual elements, learn to do that first, then go to totality. Need to give feedback on every step. Do little small steps, then get it back, then do more.

However, foreign participants did not see close supervision or guidance from experienced lawyers occurring as a matter of course in local workplaces. Like local participants, foreign participants mainly mentioned development opportunities for local lawyers arising from aid-funded programs such as RAMSI and VLSSP, the placement of foreign Advisers within local public sector offices, PILON courses such as the litigation skills workshops, placements in Australia such as the bar readers' courses, occasional aid-funded locally run CLEs or courses,²² and overseas study tours.

Some foreign participants spoke positively of these opportunities:

I could see the change in [named lawyer's] legal opinions and change in the quality of her legal and court work. Also after training I could see a change in [another named lawyer's] work. It made them work hard. They had to stay back at night to catch up, and they were attached to a mentor and I could see a clear difference. They had online work, plus four days in Australia, plus mentoring. The four days was insufficient, and a lot of the impact was from the online ongoing studies and six months mentoring. Ideally the mentoring would continue.

Another foreign participant said that without such programs it was *sink or swim* for local lawyers. Advisers had *a good opportunity to model roles, and for others to see that things can be done differently*, so long as the Adviser took account of the context also. *'Let's do it like we do at home' is bound to fail. You need to tailor all you do to the context, knowing where the [lawyers] are going then working backwards.*

²² For example, the Certificate in Office Management and Supervision. While the participant mentioned this particular certificate course being developed specifically for Vanuatu, I am not aware of it having been offered in the past five years.

While local participants made only positive comments regarding opportunities provided by aid or external organisations, not all foreigners were so positive:

[Named lawyer] did PILON litigation skills course, but he hasn't demonstrated this.

There's not much value added by overseas courses, the bar readers' course or LLM in Australia or New Zealand. I don't see much difference.

[Donor] law and justice programs are not overwhelming.

One concern regarding these programs was not the nature or quality of the training itself, but the difficulty of training in a highly transient workforce. Local lawyers *do it then leave government, but often it's because the wrong people are chosen to do the course, not the right people or not at the right career stage. Lots got training then left a short time after.* The same participant suggested that local lawyers sometimes see postgraduate study only as a way *to get out of Solomon Islands, to get travel, per diem, rather than to further their education.*

f) Part A Conclusion

Part A has reported the work that participant lawyers do in Solomon Islands and Vanuatu, where and how they developed the ability to do that work, and the opportunities they anticipated for further learning and development.

This has shown that the lawyers participating in this study worked in a broad range of legal roles, and that within those roles lawyers are likely to undertake a broad range of tasks rather than specialising. Understanding the roles local lawyers play and the variety of work they undertake is an essential first step for those planning and providing legal education, particularly when those doing that planning may have had

experience only in very different legal environments. In addition, while the lawyers interviewed for this study were drawn from and represented many areas of legal work in Solomon Islands and Vanuatu, it will be necessary for educators to understand not only the roles currently undertaken by lawyers, but also whether these jurisdictions have alternative or additional legal needs which are not currently being met. As discussed previously, when legal education was being introduced to newly independent states, it was recognised that lawyers would be needed to work on a private basis and in areas of private law, but that lawyers would also be needed to aid in nation building, governance, legal development and law reform. Further information regarding the make-up of the local legal sectors and the broader needs of local jurisdictions is found in documentary data, and will be presented later in this chapter.

Part A has also shown that there are a number of potential avenues for the development of lawyers in Solomon Islands and Vanuatu, including through the LLB and PDL programs, guidance and supervision in the workplace, in-house and external CLE programs, postgraduate courses, and short courses and training programs offered locally or overseas. In addition, it was clear that lawyers frequently developed their knowledge, skills and attitudes through experiential learning and exposure to practice, through observing and imitating, trial and error, and acting on feedback.

However, it is apparent that there are also factors which may hamper lawyers' learning and development in the local environment, including inconsistent quality and availability of guidance and supervision in the workplace, often provided by inexperienced and time-poor senior staff. There was little evidence of organised or regular training, guidance or supervision provided by local lawyers or programs, or by professional bodies. Once in the workforce, most, although not all, formal training

appeared to result from aid programs or other external providers, whether in-country or overseas.

The picture above of the work lawyers do, how they learned to do that, and their opportunities for further development, is based on the experiences of study participants. Continuing to rely on the interview data, the following section looks at the knowledge, skills and attitudes which participants perceived as necessary for local lawyers.

3. Part B: Knowledge, Communication Skills and Professionalism

As mentioned in Chapters One and Two, I had been concerned that teachers in USP's School of Law, including myself, were being asked to determine the necessary program learning outcomes (PLOs) without sufficient knowledge of local legal environments, and hence without an understanding of what local law graduates really required. I had been sceptical that the outcomes articulated overseas, including the Australian Threshold Learning Outcomes on which USP's Program Learning Outcomes were based, would be appropriate here. Consequently, in undertaking my research and conducting interviews, I did not have pre-conceived notions of required PLOs, but hoped instead that the research would help to identify those outcomes relevant and necessary for local graduates.

While I had asked participants about 'knowledge' needed in these jurisdictions, I had not otherwise identified any specific learning outcomes to participants until interviews were reaching conclusion.²³ Nonetheless, the previously identified learning outcomes — knowledge, communication skills, ethics and professionalism, research and

²³ Discussed at Chapter Two, 4 a)

reasoning skills, and the ability to contribute to law reform and legal development — were all commonly identified by participants as necessary for local lawyers. However, as will be seen, while the labels may be generic, the content of each of those categories, and what they would mean for local law graduates, is highly dependent on the local context.

This section looks initially at knowledge, communication (often categorised as a 'skill'), and ethics and professionalism (often categorised as 'attitude') — three of the areas which interview data showed participants perceive as most important for local lawyers. It then more briefly discusses research and reasoning, and law reform and development. Even though set within generic categories, the following findings broaden our understanding of the necessary content of each of these categories as it relates to local law graduates and the local legal context.

While these various areas of lawyers' need are initially discussed separately, this does not suggest that they are independent of one another. In fact, there are multiple overlaps and interrelationships between them as will be discussed in the following chapter.

As for Part A of this chapter, interview data is the main source of the information presented in Part B, and additional data is used only where participants' comments raise something which needs explanation. As was also the case above, italicised words without attribution have been drawn from the responses of study participants, and these have been directly reported where possible.

a) Knowledge

Participants discussed areas of knowledge needed for legal work in the local environment. They identified three knowledge areas of especial importance: first, the broader context within which law operates; second, *kastom*; and third, state law legal categories of particular local relevance. Each of these will be dealt with in turn.

i) General Context

The work of previous chapters has begun to build a picture of the local context within which lawyers in Solomon Islands and Vanuatu work. Interviews with participants highlighted the importance of lawyers understanding the broader local context, and being able to practise within that. In addition to the context illustrated above, local participants said that, to work effectively, lawyers in these jurisdictions would need to know, for example:

customs of the South Pacific;

context, history and kastom traditions of the country;

social life in Vanuatu, kava drinking, pig ceremonies, social practices;

kastom, knowledge about place and people, context of Solomon Islands;

cultural habits, lives of people in the villages — also for those born here in [town], they don't know the real life;

a local understanding of law, need to understand the local context, how it will impact on the wider community, how the community will respond;

about the local system so they can give justice in community-related areas;

understand the real context of the country;

their own country's legal system better.

Foreigners echoed what local participants said about the need for lawyers working in Solomon Islands and Vanuatu to understand the local context:

all the cultural stuff;

underlying existing culture;

knowledge of island time, big man, hierarchy, culture;

importance of kastom, not so much to the legal system as to the people;

some understanding of the culture, because it bogs down the process;

understanding culture, ability to do what needs doing in a culturally appropriate way.

In addition, local participants identified a need to understand the institutions and processes of the state, including both their formal structures and their practical operations. Lawyers working locally should understand, for example:

economics and how it works, where do we get our national revenue? The economy and politics and the way countries are governed — irrational leaders, dictatorial attitudes, threats to the judiciary;

the country's background, its transition to independence, and challenges in the legal system;

the constitution, because that provides a general framework for how a state is run.

The need for lawyers' knowledge and understanding to be contextualised to the local environment was evident throughout this research. References to knowledge needs were not confined in any way to knowledge of 'law' and 'legal systems', which

appeared to be perceived as inseparable from the need to understand the surrounding environment. Part of both law itself, and the surrounding environment, is *kastom*.

ii) *Kastom*

The constitutional inclusion of *kastom* within the legal systems of both Solomon Islands and Vanuatu means that lawyers need to understand *kastom* as a potential source of (state) law. However, participants in this research suggested a need for a much broader understanding of *kastom*. Lawyers needed to understand *kastom* not only in terms of its potential legal effects, but in terms of its importance to individuals and the community. Both local and foreign participants overwhelmingly identified an understanding of and ability to work with *kastom* as essential for lawyers working in these jurisdictions. A local participant stated that *it causes problems if you don't understand kastom and dealing with those sorts of matters*, and a foreign participant noted the need to *recognise that the formal justice system is only the tiniest drop in the ocean of how crime and punishment and reconciliation occur in the Pacific. Ninety-nine per cent of it happens in the 'non-state' system*.

Local participants reported that lawyers need to understand *kastom*, its constitutional status, how it has been used (or not used) since independence, and how it interacts with state legal systems. According to local participants, *kastom* is so fundamental to some areas, such as land, family and crime, that 'law' in these areas cannot usefully be understood without significant reference to *kastom*. Even where state law and *kastom* are less intrinsically connected, *kastom* will remain relevant to most topics as it is an important part not only of the justice sector, but of the life of the community more broadly.

The need to understand the formal legal status of *kastom* within the jurisdiction was also seen as important. Local participants reported a *need to know how kastom operates because the constitution recognises kastom as part of the law in this jurisdiction; the constitution recognises kastom and land, and lawyers should know how to judge cases depending on traditional law and kastom.*²⁴ A foreign participant also mentioned the need to understand *kastom from the constitutional point of view, its status as a source of law.*

Local participants reported that there was more need to understand the place of *kastom* and how it works, than to have knowledge of particular *kastom*. In this respect, there was a clear acknowledgement of the specificity of *kastom* to particular communities and locations:

Lawyers need to know the diversity of kastom;

Kastom issues are different in different parts of the country;

need some kastom specifics for each country;

knowledge of tradition, kastom ... but it's so diverse here. Pacific Island countries are very diverse, lawyers need to recognise the diversity.

Foreign participants also recognised the diversity of *kastom*, and its specificity to particular environments:

understanding of kastom and unwritten laws, so many and varied, that makes it tricky;

Basic generic stuff cross-pollinates, but you also need to know kastom, culture, language and so on for different societies.

²⁴ Italicised comments separated by semicolons or by non-italicised words are drawn from interviews with different participants.

An understanding of the interaction between *kastom* and state law was commonly mentioned as imperative for South Pacific lawyers. Local participants mentioned the need for knowledge about the *interface between introduced law and traditional law*, and of *how kastom law fits within a modern legal system*. Foreign participants echoed this regarding the ability to use local knowledge in context, stressing a need to know *kastom law, and the interface between this and introduced law; how kastom works, its role and place and interaction with the normal legal system*. A local participant added that it was necessary to understand not only the interaction between state law and *kastom*, but also their failure to interact at times: *modern legal systems and customary laws are not compatible ... especially in things like land and family, where they can be contradictory*.

Knowledge of *kastom* and its interaction with state law was also seen to require an understanding and willingness to work with both of these systems in practice. One local participant noted the need for *a good understanding of how kastom and law work — to harness traditional law and the modern legal system*. This was echoed by foreign participants, one of whom said that in the local environment lawyers would need not only an *understanding of kastom, [but also] being able to work with it and through it. Without that you won't get anywhere*.

The interplay of state law and *kastom* was also seen as an opportunity to further develop Pacific Island legal systems, but this was an opportunity often not seized. Local participants stated that:

Lawyers need to know how foreign law can complement traditional law, traditional systems should be taken seriously.

The relations between traditional law and introduced law, Pacific Islanders need more training in that.

Local lawyers also don't understand how kastom works — local lawyers should be good on those issues. They often point the finger at expat lawyers but often it is the local lawyer not taking the point.

Foreign participants also perceived that local lawyers needed to know more about the use of *kastom*, to ensure the continued development of its role within state law. One reported that *the understanding of [the use of] kastom law here is virtually zero. There could be a rich jurisprudence of kastom law if applied and argued by lawyers. It's a shame because we won't see a South Pacific body of law built.*

In addition, knowledge of *kastom* was seen to be essential for understanding particular issues in the Pacific, such as land matters. Numerous local participants mentioned the importance of understanding *kastom* as it relates to land in these jurisdictions, as *Pacific land tenure is so, so important*. Participants stated that lawyers need to understand:

kastom land;

traditional issues, like land;

kastom land, governed by traditional law on how land passes;

kastom land laws, and land here in Solomon Islands;

it's a totally different context, totally different practice here, land cases, customary rights and all that;

land tenure and how land rights pass. Formal property law is a tiny part of land here, you need an appreciation of the non-formal system.

One Solomon Islands participant explained the difficulty foreign lawyers would have in dealing with *kastom* land:

[They] would still need to learn a lot of things. Grey areas of law and life. They might think it's simple then find it's more complex than they first thought. Like land tenure, perhaps there's seven big tribes and 27 sub-tribes. They see someone acting as land owner at one place, then acting again as land owner elsewhere. This could be because he was acting in relation to his big land and now is acting in relation to his small land. It could be from his sub-tribe, but also it could go down through both parents.²⁵

In addition to land, family law, criminal law and human rights were also mentioned as areas requiring a good understanding of *kastom*. One local participant stated a need to know *kastom law, possible mitigating factors which might not exist anywhere else, could be kastom or otherwise*; another mentioned the need to understand *kastom and how it relates, especially to criminal law*. One local participant mentioned the possible contradictions between *kastom* and state law relating to family matters, and another

²⁵ This complexity is referred to in regard to Solomon Islands: 'Matrilineal: A system of descent in which membership in landholding clans is traced primarily from mother to daughter, though important connections to land and kin are often also traced through men. The people of Guadalcanal province (with the exception of the Marau Sound area) as well as Isabel, Central, and Makira provinces are often said to follow a matrilineal descent system. In practice, this refers to the emphasis placed on tracing claims through a succession of matrilineal links, as claims may also be traced through men. Patrilineal: A system of descent in which membership in landholding clans is traced primarily from father to son, though important connections to land and kin are often also traced through women. The people of the Polynesian islands of Rennell, Bellona, Tikopia, Anuta, and Ontong Java [in Solomon Islands] place an emphasis on patrilineal descent, but claims may also be traced through women.' Matthew Allen, Sinclair Dinnen, Daniel Evans and Rebecca Monson, *Justice Delivered Locally: Systems, Challenges and Innovations in Solomon Islands. July 2013 Research Report* (Justice for the Poor, 2013) VIII <<https://dfat.gov.au/about-us/publications/Documents/justice-delivered-locally-systems-challenges-innovations-in-solomon-islands.pdf>>. See also Lawrence Foanaota, 'Social Change' in Hugh Laracy (Ed), *Ples Blong lumi: Solomon Islands, the Past Four Thousand Years*. (USP Institute of Pacific Studies, 1989) 68, 71–2.

In Vanuatu also land ownership rights can be passed on either matrilineally or patrilineally (but are most often vested in men), and usufruct rights are held by both women and men: Australian Government Department of Foreign Affairs and Trade, *Vanuatu Land Program Program Design Document* (12 February 2009) 3 <<https://dfat.gov.au/about-us/publications/Documents/vanuatu-land-program-design-document.pdf>>.

noted the need to know *kastom*, *land*, *everything involves these — talk about human rights — all involve kastom and land*.

As explained previously, 'customary law'/*kastom* is included as a source of law in the constitutions of both Solomon Islands and Vanuatu.²⁶ Participants mentioned the potential for injecting more *kastom* into the state legal system, and developing the role of *kastom* through doing so. *Kastom* as a source of law within the state legal system may not be one of its most used applications. Nonetheless, independent of its status as a source of law, *kastom* is of major importance within both jurisdictions more broadly.

Kastom does not have a single meaning, and in the interviews conducted for this project, *kastom* as a legal concept and *kastom* in the more general sense were both referred to.²⁷ The following recent descriptions give an indication of *kastom*'s potential breadth and complexity:

"Kastom" : indigenous knowledge and practice and the ways it is expressed and manifested.²⁸

Kastom or Custom, if it can be usefully defined at all, could be identified as a series of accumulated, nonstatic, and sometimes conflicting values and habitual activities specific to a group.²⁹

²⁶ *Constitution of Solomon Islands 1978* sch 3 para 3(1); *Constitution of Vanuatu 1980* art 95(3).

²⁷ 'Confusion has arisen between "custom", which might be said to refer to all normal behaviour within a group, and "customary law", which is usually taken to refer to rules governing that behaviour. However, in practice, this distinction is not always clear.' Jennifer Corrin Care, 'Wisdom and Worthy Customs: Customary Law in the South Pacific' (2002) 80 *Australian Law Reform Commission Reform Journal* 31, 32.

²⁸ Vanuatu National Cultural Council, *Vanuatu Cultural Research Policy* (2004) World Intellectual Property Organization
<http://www.wipo.int/export/sites/www/tk/en/databases/creative_heritage/docs/vanuatu_policy.pdf>

²⁹ Daniel Evans, Michael Goddard and Don Paterson, 'The Hybrid Courts of Melanesia: A Comparative Analysis of Village Courts of Papua New Guinea, Island Courts of Vanuatu, and Local Courts of Solomon Islands' (Justice and Development Working Paper Series No 13, The World Bank, 2011) 17
<<http://documents.worldbank.org/curated/en/966011468286312445/The-hybrid-courts-of-Melanesia->

If there is one 'truth' about *kastom*, it is that it represents a diverse range of very localised sets of practices and values that are tied to group histories, relationships and identities through complex layers of meaning and understanding that are constantly moving, changing (and adapting) through time ...³⁰

Kastom's meaning, and its use, are highly contested politically.³¹ While debates about what is and is not *kastom*, or about how and why *kastom* is used or should be used, are beyond the scope of this thesis, the continuing importance of *kastom* in the local environment was apparent throughout the interviews. In addition to its place in the state legal system, *kastom* permeates all aspects of Melanesian life.

Kastom may be used as an alternative to the state system for local governance and dispute settlement. In Solomon Islands, for example, '[w]here it exists and is functional, the nonstate *kastom* system, typically equated with the authority of "chiefs," is the most commonly used mechanism to deal with disputation and grievance.'³² In Vanuatu it has also been found that '[c]hiefs and community leaders who are involved in managing conflict are used more frequently than state justice

[a-comparative-analysis-of-village-courts-of-Papua-New-Guinea-Island-courts-of-Vanuatu-and-local-courts-of-Solomon-Islands>.](#)

³⁰ Policing and Justice Support Program (Vanuatu) (PJSPV), *Conflict Management and Access to Justice in Rural Vanuatu* (Australian Government Department of Foreign Affairs and Trade, July 2016) 6 <<http://dfat.gov.au/about-us/publications/Documents/conflict-management-access-justice-rural-vanuatu.pdf>>.

³¹ '[K]astom has often been used in Solomon Islands as a political discourse in opposition to the state or in opposition to "the West" or "the modern"': Allen et al, above n 25, 34; '*Kastom* as it is often used and understood in Vanuatu, ... as everything non-Western and introduced, is not neutral, and what is identified and mobilised as *kastom* often represents particular interests, and even particular interest groups ... [*Kastom*] can also become a way of hedging up authority, increasing access to resources for certain individuals, and of disciplining others, in ways that may have more to do with power, and the politics of certain interest groups, and less to do with what "might have been" in Vanuatu in any given time and place.': PJSPV, above n 30, 7–8.

³² Allen et al, above n 25, xi.

options.³³ Interaction between the state legal system and *kastom* activities can be particularly difficult:

[T]he relationship between the two [state and kastom] systems is an informal one whose specific form in any given place is largely determined by the particular individuals and histories involved. This has advantages in that it allows the relationship to be fluid, flexible and responsive to local circumstances, but there are many significant disadvantages as well. The main problems include: forum shopping; confusion, dispute and mutual irresponsibility about which system applies to a given case; lack of clear pathways for moving matters between the two systems; double jeopardy; disempowerment and demoralisation by chiefs; frustration by state officials and the wastage of state resources when cases are removed by the parties from the state system to be dealt with 'in kastom'. Thus the two systems are presently at best working in parallel and giving each other only limited assistance. More often, they compete with and undermine each other.³⁴

Participants' perceptions of the role of *kastom* as an important component of local lawyers' knowledge combines with prior research to demonstrate its centrality to the local context. While constitutional inclusion of *kastom* is relevant within state law, it can be seen that this is only one element of its importance to local lawyers and local communities more broadly.

iii) Areas of Local Relevance

The knowledge of state law which participants regarded as necessary fell into two main areas: local participants referred largely to knowledge of legal areas particularly relevant to local jurisdictions, while foreign participants focused more on detailed knowledge of what they regarded to be foundational legal rules and categories.

³³ PJSPV, above n 30, 17.

³⁴ Miranda Forsyth, *A Bird that Flies with Two Wings: Kastom and State Justice Systems in Vanuatu* (ANU EPress, 2009) xix.

In relation to areas of law particularly relevant to the South Pacific, local participants identified knowledge of all areas of resources law (including those relating to mining, logging and fisheries), maritime law and environmental law. These were needed to enable local people to protect *our natural resources, for the good of the country*, because they're *real life issues across the Pacific*. Most of the resource issues were seen to require knowledge of both *kastom* and state law, as *logging, mining and so on invariably happen on kastom land*. In addition, participants identified a need for South Pacific lawyers to know about law relating to public infrastructure, including utilities such as electricity and telecommunications. Knowledge of commercial laws relating to investment, tax, banking and corporations were also mentioned in relation to Vanuatu, which was known for many years as a tax haven.³⁵

Interestingly, foreign participants were far less likely to report a need for knowledge of areas of law related specifically to local jurisdictions. They focused instead on the need for more generic but more detailed knowledge of law and legal systems. Foreign participants said that local lawyers need:

good core knowledge about the basics of the common law system;

a wider skill set to be a jack of all trades. They need to know a richer variety of stuff;

good generalist understanding, not overly specialised. There are few lawyers could have anything other than general practice here.

³⁵ Ben Butler and Ruth Williams, 'You can run, but fewer places to hide tax', *Sydney Morning Herald* (online), 5 January 2012 <<http://www.smh.com.au/business/you-can-run-but-fewer-places-to-hide-tax-20120104-1pl62.html>>. Note also 'efforts to avoid blacklisting by the Financial Action Task Force (FATF). In early 2016, Vanuatu was placed on the FATF's grey list for deficiencies in its counter-terrorism financing and anti-money laundering systems, with the likelihood of a further downgrade to the dark grey or black list if the deficiencies were not addressed.': Australian Government Department of Foreign Affairs and Trade, 'Aid Program Performance Report Vanuatu' (September 2017) 5.

Foreign participants also reported a need for local lawyers to have a better knowledge of what they (foreigners) regarded as foundational areas of law, such as:

the elements of an offence in criminal law;

the requirements of a contract;

an ability to differentiate areas such as contract from tort — defamation, trespass and personal injury;

an understanding of legal entities such as individuals and corporations;

an understanding of interests in property;

the rules of succession, and remedies.

These were all mentioned by foreign participants as areas of important basic knowledge requiring further attention.

Some foreign participants were also quite critical of the knowledge of local lawyers.

One asked *are the nuts and bolts being assimilated? The working knowledge of basic legal concepts needs to improve. They can't look at an offence and break it down into its elements, they don't know that words are defined in common law or statute.*

Foreign participants also referred to specific gaps in knowledge:

Contract law — offer, acceptance, consideration — they have no idea, and admin law, judicial review they've never heard of. Contract law often arises, but they have very little knowledge.

There are gaps in foundational knowledge, for example, in company law.

Some areas of law our staff don't know, for example, corporations law, wills and estates, rules of evidence.

When referring to knowledge of state law, very few foreign participants referred to local context. One participant noted of trusts that *resulting trusts and constructive trusts are more important here than trusts themselves*, and another said of succession that *there are very few wills here, it is mostly done through letters of administration*. However, most often it was more generic legal knowledge which was referred to by foreign participants.

iv) Knowledge Needs: Conclusions

The above shows three main areas of knowledge identified as necessary for lawyers in Solomon Islands and Vanuatu. It should be remembered that participants were referring to knowledge needed specifically in their own jurisdictions, rather than the knowledge needed for a common law education generally. That noted, the following areas of knowledge were identified as necessary:

- a good understanding of law and legal systems, placed within the context of their own jurisdiction's history and development, and the broader contemporary context including political, governmental and cultural events, systems and processes. The requirement for this broader understanding of local context demonstrates a perceived need for the study of law to include jurisdiction-specific elements, along with an examination of the place of state law within each society.
- an understanding of the importance of local *kastom* as a source of state law, including its potential for further recognition and development within state law; *kastom's* interactions with state law; *kastom* as an alternative to state law; and *kastom's* place more generally as part of the broader local context of the jurisdiction. This knowledge needed to take account of the complexity and

uncertainty involved, and *kastoms*' practical applications and implications, not merely theoretical or academic aspects.

- knowledge of particular areas of law relevant to developing jurisdictions, including, for example, law which would help protect local natural and physical resources, and laws to help with modernisation, such as those related to infrastructure, telecommunications and financial services. While foreign participants focused more on what they regarded as 'foundational' areas of law, this may reflect foreign lawyers' own legal education, in addition to their observations of local lawyers in practice.

b) Communication Skills

Issues regarding communication featured prominently in interviews with study participants. While in both Solomon Islands and Vanuatu the formal legal systems function (theoretically) in English, the situation for lawyers is rather more complex. The following looks first at what participants say about written communication skills, before looking at oral and other modes of communication.

i) Written Communication

Participants in this study frequently identified effective communication skills as important for lawyers in Solomon Islands and Vanuatu. Regarding written communication skills, references were invariably to English language, not local Indigenous languages, nor the contact languages Pijin (Solomon Islands) or Bislama (Vanuatu).

Local lawyers needed to use written English very frequently and for many purposes. They needed, for example, to write correspondence to clients and other lawyers,

including general letters and written advice or opinions; to draft charges, pleadings and written submissions for court; to write consultation papers, political and economic reports and law reform proposals; and to draft formal documents such as contracts and legislation. One comment in particular summed it up: *Legal drafting. Every day. It's our main means of communication, but we're still learning.*

Most local participants reported a need to be able to perform a broad variety of legal writing tasks. For example, while no participants described their role as 'legislative drafter', a number of participants mentioned that drafting legislation was part of their work. Many local participants, including government, private and NGO employees, drafted documents for court.

Local participants knew of local lawyers with poor written language skills: *he had to leave, he had English communication problems, we had to rewrite everything he did.* One graduate at a local private firm was *sent back to do an English course*. In addition to concern about the writing problems of others, many local participants reported a continuing need for themselves and their junior colleagues to further develop their written communication skills. They wanted to improve their existing skills, and particularly to learn to write more simply and more clearly, but also correctly and accurately, to *communicate simply, both oral and written*. They reported that they needed to be able to write at a more sophisticated level for courts, especially higher courts, yet also expressed a desire to write in ways which would be more easily understood by lay persons. Local lawyers sometimes compared their own English language skills unfavourably with those of native English speakers, other local lawyers who have studied in Australia or New Zealand, or even with other Pacific Islanders from countries in which English is more commonly used.

The communication skills of local lawyers were commonly criticised by foreign participants, especially in relation to written communication. Foreign participants made comments such as:

Their English language is so poor that their drafting, letter writing, is painful to read. They copy stuff in the hope that some of it will be right. They couldn't draft a contract.

They're coming out with extremely poor written and communication skills, they need English, writing and speaking. We sometimes wonder how they've passed their LLB.

Some long-term employees of NGOs can't write. I don't know how they can function.

One thing needed is an English strengthening program. Some of them have very poor English and won't be able to function properly as lawyers.

Some foreign participants were less scathing, and more attuned to the views of local lawyers in this regard. One noted that local lawyers *want more writing skills, they want to learn how to write, they're nervous about that, they know things but find them difficult to write — they lack knowledge of writing genres, structures.*

Communications were complicated by more than poor writing skills, as discussed below.

ii) Oral and Other Communication

All participants needed to use oral communication in their work, including for interviewing, explaining, advising, negotiating and courtroom advocacy. Others also used oral communication skills in facilitating and presenting at workshops and

meetings, providing community education, consultations and advice, and in public relations functions.

According to local participants, the demands of a legal system based on English language creates difficulties for many lawyers. Even after completing a law degree in English, using the language in the work environment is problematic, as English is unfamiliar and *locals don't speak English every day*. Even for the more competent and confident English speakers, legal language continues to present major challenges. Participants reported having insufficient English vocabulary, not knowing enough legal jargon, and thus having difficulty expressing themselves: *[local] lawyers know things but don't know how to express it clearly, how to communicate it effectively*. Recognising these difficulties, local lawyers often go to great lengths to improve their spoken English. One lawyer stated:

I go to court. I look out for cases similar to one I'm going to do, then I listen and write notes ... I go to listen to expat lawyers to hear how they advocate in court ... The only thing I want to learn from them is how they use their words to the judge. Sometimes I know what to tell the court about but the problem for Solomon Islands' lawyers is English skills, how to relate to the court what we know.

Local participants referred also to the importance, and the difficulty, of using simple language. They referred to the need to *communicate simply; to explain the law in layman's terms; to explain to people in remote areas. To translate knowledge downwards is very hard*.

Foreign participants echoed some of these comments, noting that the required communication abilities are being dictated not by the lawyer, but by the audience. One foreign participant referred to the need, especially in the local context, for *putting law*

into plain English, and for simplifying complex legal concepts. These skills are needed to communicate the law so the person you're working with can understand. While one foreign participant described this as dumbing it down, simplifying it, another noted the need for this skill to deal with clients who don't have a good grasp of law and legal processes, which is most clients in Vanuatu; clients won't speak English, and won't be able to write. Hence the need, identified by others also, to over-explain, the need to make sure the other person has 'got it'.

Foreign participants recognised that local lawyers need to be able to *make law accessible ... recognise the limitations of the audience, and communicate the law in a way that makes sense in the South Pacific context.* One described the difficulty of communicating about law with people who have no legal knowledge at all:

You need the ability to take clear instructions and to communicate clearly ... because here there is no basic understanding of law, this is possibly the client's first interaction with any state system or service at all. What is going on, what is happening, what it means. Sometimes clients don't understand, even after a trial, and lawyers don't have the ability ... to explain.

Non-written communication skills were seen by foreigners to depend as much on confidence as on language. According to participants, cultural background and social structures in Melanesia may militate against a local lawyer being confident and assertive. One foreign participant noted the difficulty of standing up to people who would otherwise be your senior, stating that as a lawyer you *need to distance yourself from your background, culture, learning and education. You need an ability to stand up to authority — your job is different from your place in the hierarchy. Don't cower, stand your ground.* Another asked, in relation to the local social structure, *how could they possibly say 'we submit your Honour is wrong?'* The inability to speak out was seen to

be a consequence of the particular local setting, where lawyers could be silenced by cultural norms regarding hierarchy and deference.

Another area reported to cause difficulty in communication for local lawyers was having to deal with foreigners. One foreign participant noted that *expat lawyers can be as bad as locals at intimidating others*. Another gave the following example:

One young lawyer had to appear before the Chief Justice. He was really well prepared, but when he found an expat was on the other side, he pushed the microphone over to his co-counsel. He couldn't face the expat on the other side. The presence of an Australian Adviser was so intimidating that the local lawyer couldn't get up.

According to foreigners, the lack of confidence is often more referable to culture than to ability, with participants making comments such as *they're too shy*, and *they don't like arguing*. Even a local Supreme Court judge was described by a foreign participant as having *a good legal brain, but no confidence*. One participant suggested that local lawyers need *elbows, the ability to stand up to people, to stand their ground*.

iii) Larger Communication Issues

The continued use of English as the language of law itself raised issues, as did what appears to be a very colonial approach to language in the contemporary legal environment. Many local participants were keen to improve their English language skills, but Solomon Islanders and Ni-Vanuatu did not see the problems of communication as one-sided only. While acknowledging that their English language skills needed improvement for interaction with courts and the profession, local participants reported that this emphasis often overlooked the need for courts and the profession to develop skills to communicate with the local population. In rural areas, for example, *[local people] can't speak English, and even Pijin could be difficult*. As a

result, many participants identified the need for foreign lawyers and judges to learn local languages, stating that lawyers in this jurisdiction *need to speak Pijin, obviously; need to be multilingual, they should speak local languages such as Bislama*.

Many local participants make the point that their own language use is dictated by foreigners:

If the magistrate is from Solomon Islands the prosecution is in Pijin, if they're expats it's done in English but translated into Pijin. The lawyer needs to translate the English into Pijin and translate language and terms into Pijin, and the understanding of the magistrate and the witnesses may be different. It also means a one- or two-day trial could go for four days ...

Participants referred frequently to difficulties in the courtroom resulting from a lack of local language skills:

Judges need to understand, speak Bislama, because otherwise it becomes problematic in court ... lawyers need to be able to adduce evidence in Bislama, but some judges in the Supreme Court don't speak Bislama.

Foreign lawyers in Solomon Islands need to understand Pijin. Testimony is given in Pijin. It's a difficult skill to translate.

iv) The Broader Language Context

Drawing on documentary data may help to explain some of the complexities involved in communications in local jurisdictions. As discussed in Chapter Three, Solomon Islanders and Ni-Vanuatu generally speak a number of languages, including Indigenous and contact languages. Their societies are predominantly oral-based,³⁶ and the development of higher literacy levels, while improving, is subject to many

³⁶ Bernard Narokobi, *Lo Bilong Yumi Yet: Law and Custom in Melanesia* (Melanesian Institute for Pastoral and Socio-Economic Service and the University of the South Pacific, 1989) 26–7.

constraints.³⁷ Melanesian culture has been passed down through stories and traditions, 'in the form of spoken narratives, of chorally performed and often danced songs and dramas, and of emotive and wept laments' rather than writing'.³⁸ Tradition and custom may be passed on through action, oratory and even 'extra-sensory' communications.³⁹ Formal literacy is uncommon in Pijin or Bislama, and even more so in Indigenous languages, many of which remain unwritten.⁴⁰ Recently, both Solomon Islands and Vanuatu have introduced vernacular languages in early education with the aim of improving literacy.⁴¹ Prior to this, without developing literacy in these languages,⁴² Ni-Vanuatu and Solomon Islanders have been schooled in and expected to

³⁷ UNESCO, Apia Office for the Pacific States, *Pacific Education for All: 2015 Review* (UNESCO, 2015) <http://uis.unesco.org/sites/default/files/documents/pacific-education-for-all-2015-review-en_1.pdf>.

³⁸ Ruth Finnegan, 'Introduction; or, Why the Comparativist Should Take Account of the South Pacific Oral Tradition' (1990) 5(2-3) *Oral Tradition* 159, 161.

³⁹ Narokobi, above n 36, 27. Narokobi notes the use of oral language and unspoken language in communication amongst Melanesians.

⁴⁰ France Mugler and John Lynch, 'Language and Education in the Pacific' in France Mugler and John Lynch (eds), *Pacific Languages in Education* (Institute of Pacific Studies, 1996) 1, 3.

⁴¹ '[O]ne of the key activities under 'quality' is to ensure that a curriculum framework for vernacular languages is developed, including minimum standards for children at the end of Grade 3, with tools in place to assess student achievement in literacy and numeracy through the use of vernacular language as a medium of instruction.' UNICEF East Asia and Pacific Regional Office, *Solomon Islands Case Study in Education, Conflict and Social Cohesion* (2014) 14
https://www.unicef.org/eapro/17_PBEA_Solomon_Islands_Case_Study.pdf.

Since 2012 the Vanuatu National Language Policy has supported the use of vernacular or contact languages during the initial two years of schooling, but requires English or French as the language of instruction thereafter: Vanuatu Ministry of Education, *Vanuatu National Language Policy* (2012) <[https://moet.gov.vu/docs/policies/Vanuatu%20National%20Language%20Policy%20\(English\)_2012.pdf](https://moet.gov.vu/docs/policies/Vanuatu%20National%20Language%20Policy%20(English)_2012.pdf)>.

⁴² See Mugler and Lynch, above n 40, 5-7 for discussion of the use of lingua franca and vernacular languages in education. See also re Solomon Islands: 'In Year 4 in 2010, 68 percent of students were below satisfactory level in literacy. A key reason for poor results is the need for students to learn English and Pijin as new languages beyond their mother tongue to participate in education. With too few children graduating from basic education with basic literacy skills, illiteracy forms a nationwide challenge.' The World Bank, *Skills for Solomon Islands: Second Chances* (2012) 2
<<http://www.worldbank.org/content/dam/Worldbank/document/EAP/Pacific%20Islands/Solomon%20Island%20Skills%20-%20Brief%202.pdf>>.

In Vanuatu there have been moves toward changing the current English/French 'dual education colonial system [which] has not worked to build strong literacy skills, pride in vernacular languages, or bilingualism. The dual system is expensive, unsustainable, divisive, and inequitable.' *Vanuatu Education Sector Strategy 2007-2016: Built on Partnership to Achieve Self-Reliance through Education* (Australian Government Department of Foreign Affairs and Trade, December 2006) 16
<https://www.ilo.org/dyn/youthpol/en/equest.fileutils.dochandle?p_uploaded_file_id=381>.

become literate in English.⁴³ Many students will not generally use English language outside school, so it tends to be learned as an academic rather than practical subject.⁴⁴

Many local students

*never have the opportunity to enjoy English in a natural setting. Compared to the relaxed atmosphere of their natural language environment, the classroom is artificial or contrived. Corrections are always emphasised and this usually has a negative effect on how students view English, which is likely to destroy their motivation as well as developing a loath[ing] towards English lessons.*⁴⁵

In addition, teachers in both Solomon Islands and Vanuatu schools may themselves lack the English skills required to teach English to others, or to teach other subjects using English language to do so.⁴⁶ Prior to independence, schools were often staffed by native English speakers from the colonising countries. Since independence, schools are more likely to be staffed by local teachers who themselves have had little experience with or exposure to English language, and hence may not have sufficient language skills 'to provide adequate classroom English experiences for students'.⁴⁷ There is a marked lack of local educational resources available so school education often relies on irrelevant and non-contextualised curriculum and learning resources.⁴⁸

⁴³ Re Vanuatu: students may be schooled in English or French, but the law degree at USP is taught in English only. Students wishing to study law in French may do so overseas, but some francophone students come from French secondary schools to USP, where they may find their English language skills even less developed than those of their English language schooled peers.

⁴⁴ Heather Lotherington, 'Trends and Tensions in Post-Colonial Language Education in the South Pacific' (1998) 1 *International Journal of Bilingual Education and Bilingualism* 65.

⁴⁵ Helen Tamtam, 'The Status of English as a Language of Education and Communication in Vanuatu. Language Issues Affecting Students: A Case Study.' (Paper presented at the Fifth Pan-Commonwealth Forum on Open Learning, London, July 2008).

⁴⁶ Ibid.

⁴⁷ Fata Simanu-Klutz, *Language of Instruction: Choices and Consequences* (Pacific Resources for Education and Learning, 1999) 2; see also Lotherington, above n 44; 'Ana Taufē'ulungaki, 'Language and Culture in the Pacific Region: Issues, Practices, and Alternatives' (2005) 27(1) *Directions: Journal of Educational Studies* 12.

⁴⁸ Simanu-Klutz, above n 47; and see Lotherington, above n 44. Note, recent work 'to develop teaching materials in Bislama and translate readers into 60 vernaculars for Years 1 and 2.': Australian

Furthermore, mixed messages may be given by school teachers who are required to teach in English but, because the students are more confident using their own language, 'may continue to teach in the [local] language, using English only when their classrooms are visited by Central Office staff'.⁴⁹ One participant noted that *village schools use Pijin or home languages, only a little English*.

Consequently, although local lawyers have studied in English language, there may be a broad gulf between their facility with English language and that of foreigners whose first language is English.⁵⁰ Various other factors, such as educational experiences and cultural expectations, will add complexity to the development of communication skills, and the ability to use them in the local context.

v) Communication Skills: Conclusions

This section has shown that communication skills are perceived to be very important for lawyers in Solomon Islands and Vanuatu, while also highlighting the complexity of developing these skills in and for the local environment. Overall, there appears to be a real need and desire to improve the English language abilities of local lawyers, especially for written work and for communicating with courts. Conversely, local Indigenous languages, and contact languages such as Pijin and Bislama, will be required for communication with most clients, with most of the population, and in everyday life. While the legal system demands the use of English language, law and its effects need to be communicated in other languages. Lawyers may be expected to

Government Department of Foreign Affairs and Trade, 'Aid Program Performance Report Vanuatu', above n 35, 8.

⁴⁹ Simanu-Klutz, above n 47; and see Lotherington, above n 44; Taufe'ulungaki, above n 47.

⁵⁰ The comments of foreign study participants in particular regarding the skills of local students echoed the findings of a number of earlier studies of Pacific Island students in the USA, discussed in John A Thompson and Roy G Bauer, 'Factors Affecting the Academic Success of Pacific Island International Students' (1994) 21(2) *Educational Research and Perspectives* 38.

have very high standards of English for some purposes, but need to communicate equally well about law with those who speak no English and have no familiarity with the legal system.

Overall, participants reported needing the ability to move back and forth between multiple languages, to communicate in a local language with a client who knows nothing of state law, and to communicate in formal English with expatriate judges who may know nothing of local language. Local lawyers need the ability to write contracts, court documents and law reform proposals in formal English legal language, while also being able to explain legal processes to uneducated and illiterate clients, and to navigate local cultural hierarchies. Further, local participants noted the imbalance which required local people to master the use of English language, while foreigners were not required to master local or contact languages. Foreign participants were critical of the communication skills of local lawyers, and local lawyers themselves acknowledged that there was considerable room for improvement in this regard.

In summary, communication in this environment involves multiple languages, oral and written activities, and appreciation of and ability to navigate broader cultural issues. Communication in the local context is both extremely important, and extremely complex.

c) Ethics and Professionalism

Participants viewed professionalism and ethical behaviour as very important for lawyers in the local legal environment. References to and concerns about ethics and professionalism appeared to include, at one extreme, intentional bad behaviour by lawyers, and at the other extreme, unprofessional behaviour related to poor

organisational skills, such as inability of lawyers to organise themselves or others, to manage workloads or to manage clients.

While it is sometimes possible to separate unethical or intentionally bad behaviour from negligent or sloppy behaviour, the two were often mentioned interchangeably.

i) Ethics

Ethical attitudes and behaviours were commonly identified by local participants as extremely important for local lawyers. Generally they noted the importance of:

ethics and integrity;

ethics and attitudes;

the need to exercise duties with fairness, be trustworthy, be trusted to represent someone;

knowing ethics and responsibility to practise law, justice and fairness and all that;

being ethical and honest, that's missing in Vanuatu;

ethics, ethics need emphasis, in the Solomon Islands this is one of the biggest issues;

understanding and respecting the lawyers' code of conduct;

embracing the code of ethics. Ethics guide your path in becoming a good lawyer or a lawyer with a good reputation. It helps you understand your duty as a lawyer, to court, to client, to public, and to yourself, and the boundaries.

Quite a number of local participants criticised unethical and unprofessional behaviour of South Pacific lawyers:

Some lawyers have good advocacy, writing, reasoning skills but fail in their ethical duty.

Ethics. Knowing law but having no ethics is no good.

Intellectual knowledge of law is good, but lawyers should practice ethics ... here lawyers do not follow what they've learned, especially about ethics.

Some lawyers do what you see in the soap operas, go behind a client's back, don't inform clients, don't take instructions, don't turn up in court, with no reason. Ignoring law and process, filing documents in court which have no merit, and making submissions in court with no merit.

There are many cases of lawyers ripping people off.

Some lawyers don't tell clients the case is hopeless in order to continue to get fees. They adjourn and adjourn. Some time limits are enforced, but when they're kicked out of court the client loses out, not the lawyer.

Foreign participants also had concerns about local standards: *ethics and professional responsibility are generally not taken seriously in the Pacific, so lots of lawyers are subject to professional misconduct disciplinary committees and charges or even criminal charges.*⁵¹ One foreign lawyer stated *I never had an ethical issue in Australia, but here you deal with them so often.*

Foreigners also criticised local lawyers' behaviour in this regard:

They take instructions and take money even when it's not going anywhere, they overstretch their ability to adequately represent – they take too many clients.

⁵¹ As discussed below in Part C, f) 'Conduct and Discipline' it is rare that these allegations are actually dealt with by disciplinary committees.

A lack of concern about what happens to clients influences their whole approach to work, they don't apply themselves, they don't think about the repercussions if they don't prepare, they don't take proper instructions.

They don't understand there's a client, they don't take ownership of that file.

In addition to clearly unethical behaviour, a general lack of professionalism amongst some lawyers was criticised by local participants:

There is a lack of respect for the court, time wasting and informal behaviour.

Some lawyers don't meet deadlines then say 'our client is in the islands, it's hard to contact them.' But I don't know if they're telling the truth or just lying.

They take a client's case but are patronising and don't treat them well.

One local lawyer suggested that *many Melanesians use culture as an excuse for bad practices. Local lawyers are slack, by culture.* Others noted issues regarding ethics and professionalism which were specific to the local context as a result of small communities and close social structures. Hierarchy and cultural norms were seen sometimes to silence lawyers, and to stop them speaking out when perhaps they ought:

*wantok, not able to stand up to a person in their own hierarchy, can't even give good legal advice if the other person doesn't want to hear it.*⁵²

The default position in Melanesia is 'leave it to the bigmen to sort out'.

⁵² Briefly, the *wantok* system implies giving preference to kin in the expectation of a series of reciprocal obligations being fulfilled: *Wantok System* in Clive Moore, *Solomon Islands Historical Encyclopaedia 1893–1978* <<http://www.solomonencyclopaedia.net/biogs/E000336b.htm>>. This is a very important concept in Melanesia, and will be discussed further below, at Part C, g) ii).

The big boys in private practice bully you around ... they use rules and procedures to get out of claims rather than using the substance.

Clients don't like bad news but you have to tell them. Often [lawyers are] slow because they don't want to tell clients bad news. They sometimes pretend they can get the client the information or outcome when they can't.

Foreign participants also saw hierarchy as playing a substantial role in local lawyers' behaviour:

They're often bullied to back down from submissions, it's difficult to stand up to bigmen.

They need the ability to stand up to authority – your job is different from your place in the hierarchy.

There is an inability to stand up to clients and give proper advice ... they're unable to say no.

They do as they're told because of the bigman system.

Lawyers lie to the court because they're scared, not necessarily from malice or anything else ... it's impossible for local lawyers to contradict the court. The common law system requires and relies on fresh graduates to stand up and challenge and fight the system ... and the judge with fixed ideas. The judge will be older, male, top of the hierarchy and the lawyer with no experience, but the integrity of the system relies on the lawyer's ability to do that. And counsel on the other side may be an expat, experienced.

It is worth noting that gender issues were not raised in this regard, and such comments were no more likely to come from female than from male participants.

ii) Obstacles to Ethical and Professional Practice

According to local participants, connections to family and community often made it difficult for lawyers to distance themselves and their work from personal considerations:

They are people with obligations, connected, [clients] come not for legal advice but for financial help, kin, wantok. It is difficult to maintain a high standard of professionalism and integrity while maintaining obligations to family and community. Drawing the line, you need to manage community obligations. What you can and can't do.

Why is it so important in the South Pacific? Because of the closeness of the ties, the need to draw boundaries between the profession and culture and kastom. When you have close relatives you will have conflict. Kastom obligations say 'you are wantok, if you don't do this you are neglecting me. What I do for you, you must do for me.' Wantok do not understand the legal profession.

My family are in the island. I'm a lawyer, they think I can take a case to court. I tell them 'I can't, I work for government, I can't do this.' They say 'you should go private so you can help your family.' I say 'no, I'm working for government, I can't do that.' All their expectations are on you. They say to me 'just do it. Just do it.' I say 'I can't do it, I work for the government.' All expectations are on you, the only lawyer on the island ... But in one government department now there is a lawyer who always does things on the side. He takes money to do it privately. Everyone knows. But should I make a complaint? All lawyers socialise together, it's hard to put in your friend. My grandfather says 'just do it. We have expectations of you. Just do it.' But I can't, I work for government.

Foreign participants also saw difficulties for ethical practice in Melanesian social structures: *ethics are foreign, [local lawyers] don't understand conflict of interest, they can't separate the professional role from the family role, unlike expat lawyers [who]*

don't need to worry about wantok issues and the repercussions of that. The reasons for local lawyers' poor behaviour may also be hidden from foreigners:

It may be unclear if lawyers don't turn up because they don't want to, or because lots of people lobbed on their doorstep last night. How do their cultural obligations fit with their duty to the court and to the client?

Everyone's connected, and expats often don't see any of it. The wantok system, every expat needs to know that. Maybe that's why he's not in court today, because someone in the court might want to kill him.

One foreign participant also noted that there is significant opportunity for local lawyers to act unethically:

There are special challenges for law graduates in this region in that the countries ... are undergoing significant economic development and change with not very much governmental regulation, and young lawyers can very easily fall to the temptation of becoming an entrepreneur, and become heavily involved and committed in entrepreneurial activities. Several of our local graduates here are in trouble with this now.

Poor role modelling within the profession was mentioned repeatedly as contributing to poor ethical and professional practice. In addition to a lack of direct guidance, local lawyers reported that senior lawyers were often setting very poor examples:

Some of the most senior lawyers are the worst offenders re professionalism and ethics.

Some senior lawyers are not setting a good example.

I read a statement of claim prepared and served by a senior lawyer, he made a lot of claims, but he had no evidence for proving any of the claims.

Senior lawyers should be an example, but they're not.

People are watching lawyers, and lawyers in the Solomons — even senior ones — do not use ethics.

They should act like lawyers, especially when they're with lay persons they need to demonstrate the integrity of justice.

A lawyer should know he's scrutinised full time, even in private life ... ethics are so critical, especially with the smallness of society, you need to maintain professionalism all the time, in or out of work because society is so small it doesn't matter whether you're at work or not.

One young lawyer described some of his senior colleagues:

Lawyers who don't turn up for work. [Lawyers] are often off and it becomes a serious issue. Senior lawyers in [named public sector office], two in particular normally do that. Other times they get paid on Thursdays so they don't attend on Fridays because they got drunk on Thursday. I told my boss I got kicked in court because of the behaviour of these other lawyers. Now there's a policy that pay will be deducted if you're not at work without reason.

As mentioned previously, parliamentarians may also be poor role models:

Leaders are not applying the law, they look for and use loopholes. Lawyers allow the loopholes. For example, if the Attorney General advises government and allows a decision which allows government to use a loophole, that is not good. Then loopholes do not get changed or closed. For example, a minister is given a discretion, the discretion is meant to be used for the good of the country, but now it is used for personal reasons.

It's very difficult to deal with politicians. We give advice, we say 'this is the law', 'this is it' but they want to try to find some other way around it. 'What if we were to go this way? What if we were to go this way?' I say, 'No, this is the law.' Sometimes we provide advice but they go on the other way. But if they do this and find out the law is broken, then they come back to us again ... Usually dealing with the government departments is good because

they're not political appointments. But it's within the ministry, the ministers don't like to follow.

Like local participants, foreigners were also concerned about the lack of role models available to local lawyers:

ethics, critical to the legal profession, but no guidance, no proper structure regarding what the community expects.

ethics ... they may not learn that or get that in practice.

You see some really appalling behaviour, rarely disciplined. So young lawyers see this and think it's an appropriate way to behave ... for example, the Attorney General and the government do wrong things.

It's difficult to teach people to be lawyers, tell them to follow the rules and procedures, but the court doesn't ... there's no point having rules in place if people at the top are not the most compliant, and not only when it suits them.

[named government minister] beating up newspaper men, there's no respect for the introduced system of law.

Role modelling in professional stuff is important. You need to model not just for junior lawyers but for other lawyers also, you need to act ethically, not take advantage of situations ... you can't help the opposing lawyer due to your duty to your client, but it would improve the legal system if you could.

There are a couple of issues which came up in relation to one jurisdiction only and so will be differentiated here. In relation to Vanuatu the following comments were made:

It's difficult to discuss these matters with someone more senior in the field ... most senior lawyers don't have time to talk about ethical matters. It's been brought up with the Law Society but they're not forthcoming. There needs to be mentoring from senior legal professionals but it's not there. Some, if not most, have been involved in dealings which are questionable ... so if you

wanted to talk about ethics stuff you wouldn't know who to talk to, who is themselves ethical.

The Law Society is useless, I got no response, you can't talk to them, the President is away, busy. [As a member of parliament] I tried to get the Chief Justice to better manage cases. I asked the Law Society to get a list of outstanding cases from lawyers, I couldn't get the information. Lawyers don't want to assist their clients.

No such comments were made regarding the Solomon Islands Bar Association, but different concerns were raised in regard to this jurisdiction, including the pressure of corruption generally, and the poor pay and conditions of lawyers. Solomon Islanders mentioned the following ethical concerns:

Accepting bribes, 90% of lawyers will encounter such issues. They'll be offered bribes by government or some official ... it's very common in Pacific Island countries ... it even goes as far as judges. Dealing with corruption, bribes, conflict of interest, external pressures. It's common generally. There is too much work and external pressure and corruption ... corruption will affect all the other things too, not just the leaders but others are corrupt also, in the public service only 30 to 40% work honestly ... they want fast cash.

Levels of government lawyers are not attractive, pay is very low. It's a high level profession, they're seen as people with knowledge and integrity ... but lawyers are treated the same as other public servants — it is not fair to lawyers. They face challenges, they're open to attacks and abuse, they should be treated better. Lawyers and magistrates end up in gaol because of low wages. They do things against their profession ...

Echoing some of the concerns raised above by Solomon Islanders, a couple of foreign participants also raised the poor pay and conditions of lawyers, especially government lawyers, in that jurisdiction:

There is too much pressure on locals, working two jobs, one paid and one for wantok, one working two full-time jobs left to become a taxi driver! They're paid next to nothing, are struggling to survive, and they have huge issues outside paid work.

Government lawyers' pay and conditions are hopeless, people leave law and go off to be an office manager in a gold mine because it pays more — there is poor pay across the public sector so they tend to get more junior lawyers (but not necessarily worse lawyers) because lawyers leave the public service to get more money.

While the pay and conditions of government lawyers was a concern in both jurisdictions, Vanuatu appears to have made some headway in addressing this issue.⁵³

iii) Disciplinary Procedures

Disciplinary procedures and mechanisms were roundly criticised during interviews. Participants noted that a regional approach to lawyers' discipline had been mooted, and in both Solomon Islands and Vanuatu changes had been promised. At the time of interviews, however, participants were generally very unhappy about the existing processes:

There is a disciplinary mechanism but it's rarely used ... clients don't know they can act against their lawyer, and legal aid is aimed at criminal cases so a client who loses a civil case as a result of a poor lawyer has little help.

No-one challenges them, they trust them because they're the lawyer ... the legal profession has had problems disciplining lawyers because the lawyers need to confront one another.

⁵³ AusAID, *Stretem Rod Blong Jastis: Vanuatu Law and Justice Partnership Design Document* (Department of Foreign Affairs and Trade, September 2011) Annexe 11: Summary of VLSSP Mid Term Review, 44 <<https://dfat.gov.au/about-us/publications/Documents/stretem-rod-blong-jastis-design-document.pdf>>: Comparison between 2000 baseline — 'High staff turnover due to inadequate salaries, leading to staffing shortages and skills gaps' — and 2008 situation — 'Substantially improved, owing to increased salaries and a lack of alternative opportunities for lawyers in private practice.'

Complaints about lawyers should go to the Law Council ... [but] the Judicial Services Commission and the Law Council ... keep passing it back and forth.

One local lawyer mentioned the damage done to the profession more broadly through the lack of discipline:

I'm disappointed with the failure to investigate complaints about lawyers ... maybe there's no formal complaints but [authorities] should be inviting people to raise their concerns. It's not just an issue of clients paying money, it's other ethical stuff also, it rubs off. I go to my home village and people say, 'What does he do?' 'He's a lawyer.' 'Oh, he's a liar.' That's the picture they have of lawyers because some people in the past did something wrong. It hasn't changed.

Discipline of the legal profession also concerned foreign participants in relation to both jurisdictions. In relation to Vanuatu it was said that:

There's no capacity to discipline the profession. Governance of the professions is sub-standard, unsatisfactory ... It undermines the rule of law when they don't follow the rules and no-one notices.

And in relation to Solomon Islands:

It's worse here because there's no disciplinary committees, nothing's done unless there are criminal charges. In a jurisdiction which responds aggressively you can decrease the level of bad behaviour, but in a jurisdiction which is passive it gets out of control.

iv) Professional and Organisational Matters

Participants' comments above have demonstrated concerns regarding the ethical behaviour of lawyers, and the challenges they face even when they are keen to act ethically. It appears from the responses of both local and foreign participants that there are also more basic needs which must be met to enable professional behaviour.

As one foreign participant mentioned, local lawyers need to know *what professional*

responsibility involves — everything else flows from that. For example, organisation, time lines, only taking matters where you have the capacity, moving matters through court promptly, responding to letters, and if you do that it will improve many things.

Local participants mentioned the need for basic organisational skills, including in *management; organisation; process; efficiency; administrative stuff — putting things in files, hole punching; generalist skills; work allocation; case management; file management; file work; record keeping; accounting, billing clients; time management, legal work; and skills for planning and managing projects.* That these could not simply be assumed was clear in the comment of one local participant:

filing, storing things properly, knowing to come back to it, knowing how to answer the phone, work habits, not standing up a client and making them wait an hour, filing, need to know both computer and paper filing. Supervised practice, isn't that what it's for, to teach them how to do things?

Many foreign participants also commented on organisational issues arising for local lawyers. A number of their comments draw a link between organisational abilities and professional behaviour:

They're not organised.

They don't know to turn up on time.

Few use leadership or forward planning skills, goals, future ideas.

They don't list things to do, go through it every day, how long will these things take? [It's necessary to] teach them to diarise meetings ... clients are dissatisfied because lawyers have too many matters and no to-do list.

Planning ahead they're not good at, [they don't understand] the need to push things on ... their responsibility, planning ahead ... pushing clients for

information ... they actually need to deal with things, not just put it in a drawer.

There's a lack of basic professionalism, sloppy, informal.

When there's time pressure they take short cuts, guess answers.

They don't apply themselves, don't think about the repercussions if they don't prepare.

They must take ownership, it's about ownership and accountability. They don't understand there's a client, they don't take ownership of that file. They don't meet deadlines, they don't do what they're asked.

Lack of training and supervision was seen to contribute to these issues:

They need the knowledge that others get from properly supervised practice.

Often junior lawyers seem to lurch from matter to matter with inadequate supervision.

You can't rely on them just picking things up, in many cases there is no-one there to teach them.

The degree of instruction and management is woeful, with the odd exception ... their legal skills and knowledge are completely hamstrung by lack of training when they get out ... they need someone checking the standards, needing to re-do things, needing to keep correcting to build skills and understanding.

While many of the above comments are critical overall, a couple of foreign participants noted that some of these issues raise much broader concerns than individuals' behaviour:

Self-sufficiency. With limited resources and support you need to be a self-starter to work through problems and find answers. They often give up

before they start if they hit problems. Self-sufficiency develops with confidence. If they had a better idea of where to start they might be able to begin by themselves rather than asking for help. If it's in the too-hard basket, or more difficult, or a particular lawyer is on the other side, they'll delegate to someone more junior ... they're happy to avoid work, so happy to step out if conflict is involved — they're quick to disqualify themselves. If there were a consequence for failure to do the work it would be great.

Another foreign participant also noted that lack of consequences can encourage unprofessional behaviour, or at least allow local lawyers to see it as the norm:

There's inadequate capacity or willingness or desire, inability for whatever reason, to handle their matters properly, but the court system is pretty indulgent, the court system doesn't kick them up the arse, it shrugs its shoulders, lets the matter roll on for a long time. Clients don't know the process so the client's not going to kick your arse, the court's not going to kick your arse, so it doesn't bode well for improving things. The difficulty of communicating with clients is also a good excuse for delay.

Finally, some participants made comparisons between local and foreign lawyers. A local participant stated that *expats show professionalism in the way they carry themselves, it takes Solomon Islanders a while to get used to being professional.*

Foreigners made the following comparisons:

Expats are more pushy, more robust. With locals the standard of documentation is lower than that of an expat lawyer, and compliance with directions is lesser. Locals are more used to a casual approach, whereas [expat] is trying to put things on a more professional level.

You can see the difference between local and foreign judges, especially in regard to time wasting.

Local lawyers need greater individual assistance than Australians, they need active mentors to prevent procrastination. Why? Feeling inadequate, scared they won't be able to do it properly, greater sense of doing things as a

community, not as individuals, and that's tougher. Also island time, being allowed to do things late, and being late creates a barrier and makes it harder. No understanding of time lines.

The importance of work here is different. In law in Australia there are people of drive and high achievers and sacrifice. Here not so, here they have other things that are important. They can't afford to be a QC in the making. They need money, they need to find money for their family. They think 'my family sacrificed to send me to university, now they expect me to provide for them.' What are the motivations of young lawyers in the Solomons? To get paid every two weeks. Why do they go to the PSO [Public Solicitor's Office] or DPP [Director of Public Prosecutions]? No reason, they just want to get paid every two weeks. They hadn't thought about helping needy people, just about having a job and getting paid every two weeks.

While foreign lawyers were quite critical of local lawyers in terms of management and organisation, one local lawyer had a different perspective: *Australian and New Zealand lawyers dot their 'i's and cross their 't's, they know their stuff but they might be a bit one-eyed, and later on they'll come around. The longer they stay the more they realise things aren't always as they see it.*

v) Ethics and Professionalism: Conclusions

According to study participants, ethics and professionalism are real concerns in the local environment, and pose ongoing challenges both to individual lawyers and to the local legal sector more broadly. Concerns include the difficulties of working in an environment rife with unethical practice and poor role models, a lack of guidance for young lawyers, inadequate disciplinary procedures, and cultural, political and economic demands and expectations.

Local lawyers need not only knowledge of ethical practice, but the tools to apply that knowledge within the local setting. This will often mean lawyers needing to navigate

serious contradictions between their personal and professional lives, and to work through situations which bring them into direct conflict with cultural expectations.

In addition, lawyers need the organisational and professional skills required of common lawyers. These may not conflict with past experience in the way ethical requirements do, but might nonetheless be well outside their experience. For example, requirements of formality, timeliness, documentation, and orderly workflow are unlikely to be the norm in local life.

While ethics and professionalism have been treated somewhat separately in the section above, participants regarded the two as closely connected. General incompetence in organisation and administration, lack of professionalism, and unethical practice will often differ in degree rather than in substance, such that a lack of basic organisational ability could have serious negative repercussions upon professional and ethical behaviour.

d) Research

This section discusses research skills. Part C provides greater details about the underlying research information infrastructure. However, the two issues are, of course, related.

The majority of study participants mentioned the need for lawyers to have good research skills, as research was one of their most commonly performed tasks. Participants noted that both they and their juniors required more skills in this area. 'Research' is of course a very wide term, and it was not always clear what kind of research, or research purpose, was being referred to. Participants said they needed to be able to:

research in civil and criminal cases;

know how to find precedent and put it together, find books;

case law research;

research evidence;

research for court cases.

Local participants recognised the foundational importance of research skills to lawyers: *you need broad knowledge, or the ability to get broad knowledge; a good lawyer can adapt, not just memorise, can do real research and adapt to a real context.* They also recognised that legal research skills are needed *to develop a body of information which would be relevant and useful to anyone.*

i) Sources

Most local participants mentioned using the Pacific Islands Legal Information Institute (PacLII) for research. PacLII was identified as the main legal research tool in the region.⁵⁴ One local lawyer, however, thought the use of PacLII was somewhat limiting, mentioning that lawyers need *research skills for overseas cases and legislation ... they know PacLII but not overseas stuff ... PacLII's good but more [is needed] on Australia and New Zealand, Canada, House of Lords, overseas cases ...*

No local participants mentioned using any traditional legal research tools such as digests, bibliographies, indexes or citators. Other than PacLII, references were made to three specific resources only. All three were proprietary resources developed and

⁵⁴ PacLII is discussed further in this chapter at Part C, h) iii).

owned by foreign companies. Participants were familiar with these from periods spent overseas, and none of the products were available locally.

ii) Research Skills

Two foreign participants noted the need for local lawyers to understand an area of law before commencing research:

You need legal research, and knowing where to start with a problem.

A good degree is less about knowledge. It's your grounding and understanding of how it all fits in ... then analytical research skills ... research and analysis take you to the right answer.

Some foreign participants were critical of local lawyers' research skills: *local lawyers can't research New Zealand and Australia, the common law. They don't even go on PacLII, let alone look more widely*, but many also acknowledged the difficulty of researching in the South Pacific environment. Although PacLII made a huge difference to the ability to find South Pacific legal materials, PacLII was not comprehensive. Furthermore, the resources available to researchers elsewhere were simply not available to South Pacific lawyers:

There's no librarian; here legal research does need more skills, just finding stuff, finding what is current law is a challenge in itself. South Pacific lawyers need an ability to pull things from all sorts of places to use. You need research skills for things that are old, or from another jurisdiction, or unreported.

iii) Other Factors

Both foreign and local participants also noted that knowledgeable people are a major resource for legal research:

You need research skills plus street savvy — do I ask a partner or associate or go online, or do I ask the secretary who knows everything?

You need research ability, ways to get information, networking, friends, people you meet.

Knowing how to get the information you need ... you may need to talk to a number of people to get the answer.

The difficulties of researching in the local environment are discussed more fully in Part C. Briefly, these include slow and often incomplete collection/collation of resources, multiple and uncertain sources of law in each jurisdiction, lack of access to online research resources, expense of proprietary research tools, and shortage and often outdatedness of local secondary sources. Textbooks and materials from other jurisdictions are more readily available, but may confuse students and lawyers regarding the status, or even existence, of local law on a particular topic.

Even when using 'standard' doctrinal and written resources, the need for creativity is apparent. There may be no local law on a particular topic, and there will often be uncertainty as to the potential applicability of law from multiple sources. Due to lack of local resources, research may require the ability to find and use law from other jurisdictions, and to argue by analogy for the law to be accepted as part of local law, or alternatively to distinguish it from those laws applicable to local circumstances.

The research skills required and of use in the local environment depend very much on the resources available, and will not always mean finding published or written material on a topic. Formal legal research skills will need to be supplemented by informal, creative, innovative research given the limitation in resources that needs to be confronted on a daily basis.

iv) Research: Conclusions

The interviews disclosed a number of unique problems and challenges that local lawyers face in relation to research. Limited access to research tools inevitably hinders development of research skills and experience, by limiting exposure to necessary and useful legal sources of information. Asking people you know for help is not unexpected. However, even with greater access to conventional sources of legal information and related skills development, it is not clear that the research needs of junior legal professionals are likely to be easily met.

In the local context, research is often required not only to find the law, but to develop it. Participants mentioned that, in recently independent jurisdictions, there may be greater opportunity for influencing the court and the development of law, but this will require more work also. Arguments may need to be supplemented by local empirical research to convince the court of the suitability of the law that is sought to be applied.⁵⁵ In developed countries, this kind of work is generally specialist research, conducted in conjunction with legal academics, anthropologists, criminologists, psychologists and other trained professionals. It is not part of the usual working lawyer's remit.

Different research needs will also arise where a matter moves between state and *kastom* systems, or where a lawyer seeks to invoke *kastom* for application in the state court system. The need to provide evidence of particular *kastom* can hinder its recognition in court, so that lack of relevant research skills could impede the further development of pluralist jurisprudence. Research may require alternative means of

⁵⁵ Jean G Zorn and Jennifer Corrin Care, 'Barava Tru — Judicial Approaches to the Pleading and Proof of Custom in the South Pacific' (2002) 51(3) *International and Comparative Law Quarterly* 611.

discovering what has been done in the past, well beyond looking at published cases for written precedents.

Finally, a good understanding of the local context will be needed to understand the expectations of courts and clients, the nature of the information required, and the possible methods of researching and collecting relevant material. Lawyers will need to work creatively, and often cooperatively, to further their research.

e) Thinking Skills

Common lawyers are generally expected to use particular styles of thinking, often described as 'thinking like a lawyer'.

i) Analysis

In this research both local and foreign research participants identified the importance of analysis to legal work. *Analysis, critical analysis, analytical and critical thinking, analysis of facts, analysis of evidence, analysis of pleadings, analysis on the spur of the moment or on your feet; skills to help rationalize, analyse...* were all mentioned.

In addition to analysis, which was most commonly mentioned, there were other articulations of the thinking skills used in lawyers' work. Local participants mentioned *the ability to identify problems and issues, and to deal with them accordingly; the need to evaluate the strength of the evidence... to decide if the case has sufficient evidence to proceed; to give an opinion and advice; or to make decisions.*

Local participants wanted to *understand law and legal principle, and how they apply to the work I'm doing.* Another recognised the need for *an understanding of the issues arising, as until you know the issue to the principle you can't be on the right track.* Local participants also mentioned a desire to improve on interpretation either generally, or

in relation to legislation. One local participant mentioned that some local lawyers *couldn't recognise the issues, they didn't have the depth.*

ii) Judgment

Foreign participants were more likely than local participants to articulate the need for legal thinking skills. In particular, they commented frequently on the importance of judgement. One said that he *mentor[s] to assist in making judgement calls*, while another noted the importance of local lawyers *using [their] own judgement, applying discretion*. Foreign participants mentioned local lawyers:

not thinking through whether the facts support the charges. [They need to] use judgement, to get some objectivity;

[needing the] ability to formulate views on the client's position; to analyse a case for merit;

[need] to recognise matters which should be discontinued, to look at alternatives.

Another foreign participant suggested that local lawyers need to stop *blindly following, try to improve their ability ... to make independent judgements, think through issues and get the right answer regarding law, justice and so forth.*

As with many of the matters mentioned above, some foreign participants were quite critical of local lawyers' thinking skills. Some of this criticism identified cultural factors as problematic:

The biggest thing holding them back is ... critical thinking and analysis. Melanesians in particular rarely have an opinion, they do as they're told because of the bigman system. It's an aid-dominated passive communal society, everything in the system encourages them to be passive, they don't have opinions.

Levels of both knowledge and thinking skills were questioned. One foreign participant mentioned local lawyers often not knowing where to begin with a problem, and then guessing, rather than applying legal reasoning. Others mentioned the need for better skill in *adopting and applying precedents; and a keener understanding of precedent, [as there is a] tendency toward seeing it all as single issues*. A judge stated *they think 'here's a case, this is what we do with a case.'* Not *'what do we need to do to resolve this?'* They don't think *'what's the best way to win this case? What do I need to put before the judge?'*

Foreign participants' criticisms of the thinking skills of local lawyers seemed to include broader concerns about knowledge, process, communication and so forth:

They can't argue ... they can't debate, they can't reason. I say, 'talk to me, let's play devil's advocate.' They won't do it. How can you graduate as a lawyer and not be able to reason and think things through? They can't think laterally, they can't think 'what am I being asked to do?' They don't have the basic skills required to perform the task. If they just had the ability to reason, argue, think — they could do it all ... uni should make students talk and debate and reason.

iii) Local Challenges

For some, however, criticism of thinking skills was tempered by an understanding of the challenges facing local lawyers. The environment within which these lawyers work was seen to demand more of lawyers than other legal environments might. One lawyer mentioned the need *to be able to modify, be flexible*, while another noted the increased need for creativity:

Thinking outside the square. In Australia there's more certainty so there's less scope for creativity. It's more challenging in the South Pacific so it requires more complex legal analysis than in Australia ... There's so much more to practising law in the South Pacific than what you learn in a law

degree in Australia ... Australian lawyers are not taught to think outside the box, Australian lawyers are taught 'you find the law here'.

While some participants, both local and foreign, referred to analysis or critical analysis in its own right, the need for legal thinking was most often identified not in the abstract, but as applied to a particular purpose such as identifying issues, solving a problem, evaluating evidence or making a decision. The 'thinking' referred to was often used alongside other knowledge, skills and attitudes. The need for independent judgement, for example, may be constrained by issues mentioned in previous sections, such as having sufficient knowledge, being confident in one's own abilities, being able to distance oneself from social and cultural matters, being able to withstand external pressures, and so forth. The ability to make judgements at all, and then to make good judgements, involves thinking skills, but also depends on multiple broader factors.

As discussed previously, it is also important to note that 'thinking like a lawyer' may conflict directly with local ways of thinking.⁵⁶ For example, emphasis on rationality, science, individuality and independence may cut across local preferences for spiritualism, interdependence, and respect for status and hierarchy.⁵⁷ Argument and contestation, prized by common lawyers, may directly contradict a preference common in Melanesian society to maintain balance, peace and harmony.⁵⁸ While common law relies on the use of precedent, local people may find it difficult to reason from the specific to the general and vice versa, and to apply knowledge from one

⁵⁶ Aidan Ricketts, 'Threshold Concepts in Legal Education' (2004) 26(2) *Directions: Journal of Educational Studies* 2; and see Chapter One, 2 The Research Problem and Literature Review.

⁵⁷ Konai Helu-Thaman, 'Hints for Teachers at the University of the South Pacific: (Multi) Cultural Sensitivity 1996 5(2) *Pacific Curriculum Network* 6
<<http://directions.usp.ac.fj/collect/direct/index/assoc/D1065015.dir/doc.pdf>>.

⁵⁸ Narokobi, above n 36, 53.

situation to another seemingly unrelated situation.⁵⁹

As one participant put it, *it can be difficult to place everyday problems within the whole body of law.*

iv) Thinking Skills: Conclusions

In summary, specific types of thinking skills were identified by both local and foreign participants as necessary for local lawyers, and those most commonly referred to were analysis, reasoning and independent judgement. Local participants mentioned thinking skills of any kind less commonly than did foreign participants, and neither group emphasised these like they did the need for knowledge, communication, ethics or research.

f) Legal Development and Law Reform

As already foreshadowed in previous chapters, introducing local legal education was anticipated to help meet the recognised need for law reform and further development of local legal systems.

i) Local Context

Local participants recognised that local law is often outdated and does not fit contemporary needs or local situations. Local participants mentioned the need for skills for *legal policy development, and drafting skills, in particular to handle issues of legal pluralism*, as well as the need for commitment to further legal development.

Law overrides kastom. Kastom only comes in when there's a gap. The other party is using kastom as a basis of the claims, but I just use the law. When the law overrides kastom that's enough ... But in some perspectives it's a bit

⁵⁹ Jennifer Corrin Care and Susan Farran, 'Law in the Pacific: Implications of Jurisdictional, Cultural and Ethnic Diversity for the Teaching of Law' (1997) 31(3) *The Law Teacher* 283, 291; Helu-Thaman, 'Hints for Teachers at the University of the South Pacific', above n 57.

unfair, especially for people in the island. It's very unfair for them. They need to fight for reform, for kastom to be a little more recognised.

Lawyers need a good understanding of how kastom and law work — and how best to harmonise issues of kastom with current laws.

One local lawyer working in law reform gave an example relating to land:

Land is a big concern. Land law is derived from English common law, and clashes with kastom law. Now the Minister is trying to review the legislation to bring in kastom law. There's new legislation to introduce reviews to ensure kastom owners do not lose out to developers. The consultations are going on now.

Local participants noted that all legal development and law reform required an understanding of the local context more broadly:

The most important thing for a lawyer, in my field, would be to familiarise him or herself with the current affairs of the country he or she is practising in. Without knowing and understanding what the country is facing and the need to change certain matters, it would be difficult to properly draft laws.

Depends also on an ability to understand local understandings of law. You need to understand the local context, such as how it will impact on the wider community, how the community will respond, how to effectively implement it. ... Understanding what people can achieve in their own community, the importance of participation in your own affairs and system. Just changing law doesn't do much. You need sustainability from the inside.

ii) Activism

Many local participants noted the need for lawyers to contribute to the change and development of law for their communities more broadly. They referred to both the need to understand the contemporary environment, and the responsibility to make a stand toward its improvement. Local lawyers noted, for example:

Lawyers have a responsibility to raise matters, to initiate things, especially in things that affect your community ... Lawyers tend to follow the legislation only, so if kastom is not written they won't use it. We tend not to argue further, so if it's not written in legislation we tend just to leave it and not argue further. So the initiative has to come from the lawyers. Lawyers should stand up to problems. They should have a law reform bent. The purpose of my studies is to assist my country ... lots of laws need to be reformed.

Relating work as a lawyer to what is happening in politics and in general life, and how you can use your knowledge and skill for change for the better. You try through work to help create good governance, and good governance brings social security. You should use your education for the good of society.

A lawyer should be analytical, not just accepting things the way they are — lots of gaps in South Pacific law, and lots of grey — lawyers use and abuse those gaps. Lawyers should like to make benefits for the whole system. They should help the country go in the right direction, to strive to improve the laws of the country, not just use the gaps for themselves and their client.

Loopholes do not get changed or closed. For example, a minister is given a discretion. The discretion is meant to be used for the good of the country, but now it is used for personal reasons. The law should be changed ... Many politicians are weak. Lawyers should say something, should talk, take the initiative. Because they're well trained, and they should see that these practices don't work well for the country. They should speak and draft something different. Lawyers should contribute effectively, professionally. They should be up-front. They should contribute in a way that is better than outsiders do, they should be the front line of the legal development of the Pacific.

Some law here is old, based on old British laws, but we should be looking at things which fit our situation. Lawyers should look to make laws fit our situation and our country's practices.

Foreign participants also recognised the need always to pay attention to the local context, and to what local communities wanted:

We should not say 'that's how it works here,' but really the question should be 'how do you want it to work?'

You should ask 'is this system appropriate for these people?'

Foreigners noted the need for legal change and reform, and the opportunities available in this area, but also the difficulties of achieving this. One noted the need for lawyers

being creative and open to the complexities of sources of law that operate in this country, and having an open mind so you can look at kastom and common law and statute — taking a creative approach to problems in the country you're working in. The law here is emerging, and in an emerging system there's a great capacity to shape it, develop it. You can get away with more with the arguments you can use. You're less restricted because things aren't so sure, there are so many gaps ... I tell them, 'you are the next generation of lawyers, these are the arguments you can make to the court. Your role is to own it and turn it around and make it law. I tried to bring in kastom where possible, because the curriculum and contract law is so steeped with antiquated English stuff completely out of context.

The need for further and better contextualised legal development and law reform was recognised very early as an important part of the role of lawyers in newly independent states.⁶⁰

iii) Legal Development and Law Reform: Conclusions

The views of study participants bear out the continuing need for lawyers who have both the skills and the commitment to further develop local law and legal systems. This requires an awareness of how the system works more broadly, an understanding of

⁶⁰ Discussed in Chapter Four, 4 The Role of Lawyers and Legal Education.

the potential for change, and an attitude which seeks to improve the way law works in the local jurisdiction.

g) Practical Abilities

Practice has not been identified as a learning outcome in its own right. However, all the learning outcomes identified above are described in USP's PLOs in practical terms: 'graduates will be able to ...'. Participants frequently referred to the importance of graduates being able to *apply* the learning outcomes, and being able to *perform* them in practice. Even the knowledge outcome, which could be seen as academic or theoretical, was shown to require an ability to work with that knowledge in the context of the local environment. Regarding other outcomes, participants identified the need for graduates to be able to draft written documents, argue in court, explain law to clients, withstand demands, find law and other resources, analyse problems, make sound judgements and so forth, all of which require practical application of their learning.

Local participants frequently called for greater connection between academic and practical learning at university.

At university we should do things which are more practical. You can't learn it by being told, you need to practise.

At USP we study law but not how to do it. Practical application — we need more knowledge from USP. We get knowledge of law from USP, but not the practical side, we need to know how to use the knowledge in court and in practice.

At law school we're not taught how to use it.

Practice is totally different and most things we come across we didn't come across at law school.

Knowledge of practice, that's the key thing required for local lawyers.

Having knowledge of law is one thing, but putting it into practice is another.

At PDLP we'd learned how to do things in order, but at work it was really all new in a practical sense.

Practical skills should be done earlier.

When you apply and use the law, that makes it complete.

It will be recalled from the first part of this chapter that practical and experiential learning was at the forefront of participants' responses regarding how they learned to be lawyers. Moots, placements and clinical experiences were most useful during LLB and PDLP studies, and, in the workplace, observation, imitation, trial and error, and *doing it* helped graduates to develop their competencies.

The need for local law graduates to have greater practical skills earlier was also a frequent refrain amongst foreign study participants.

Practical skills are needed, otherwise all the learning is meaningless.

The practical side is scandalously lacking.

Even students from the best law school are not worth tuppence without being able to apply their theoretical knowledge to practice.

Students here need to hit the ground running.

They need lots of practical training prior to entering the workforce.

They need experience.

They should be fully equipped so when they go out to the legal field they have already acquired the legal skills.

They need to go straight into work when they finish university ... they need to be able to get in and do the work.

Students should emerge from USP with more practical legal skills.

It was suggested by foreigners that the law degree

needs to focus on practical matters, how to be a lawyer, not just theory;

needs to teach practical skills;

needs more practical components. There's little that's practical, it is all at too distant a level.

It is clear from this, and from the way that all of the learning outcomes were discussed by participants, that the learning achieved by local lawyers must include both an appreciation of its practical applications, and actual practice.

h) Part B Conclusion

This section has reported particular areas of knowledge, skills and attitudes that those working in the legal sectors of Solomon Islands and Vanuatu perceived as necessary for local lawyers. In addition, it has begun to identify some of the difficulties local graduates might face in attempts to develop and apply those competencies. The findings of the empirical work have been presented in a way which the data itself suggested, but which I hope will also make it more readily accessible to legal educators. At the present time, when educational practice and university administrations calls for attention to and articulation of threshold or program learning outcomes, the findings above should help educators both identify, and give content to,

some of the outcomes necessary and appropriate for law graduates in Solomon Islands and Vanuatu.

Superficially, the knowledge, skills and attitudes identified above coincide with those articulated in many overseas jurisdictions as being necessary for lawyers. Knowledge, communication, professionalism and ethics, research, reasoning, and commitment to legal development and law reform could all be required learning outcomes for common lawyers anywhere. However, this research has also demonstrated that many aspects of these seemingly generic learning outcomes need to be contextualised to the environment in which local lawyers work, and could not be effectively developed without doing so. The literature regarding local legal education, canvassed in Chapter One, and the literature relating to the establishment of the South Pacific law degree, canvassed in Chapter Four, has also made this point — that local legal education needs close contextualisation to the surrounding environment.

Part A and Part B of this chapter have presented the findings regarding the work lawyers do, how they learned to do it, their opportunities for further learning, and their perceived needs in terms of knowledge, skills and attitudes. The following section introduces additional data to give broader context to the findings reported above.

4. Part C: The Local Legal Environment — Rounding out the Picture

Part C introduces data drawn from documentary and other sources to broaden the reader's understanding of the environment in which local lawyers work, and to add context to the responses of participants reported above.. These additional sources reflect many of the same issues as participants themselves raised, and illuminate broader challenges also. Where appropriate, participants' comments are included.

Some participants' comments are repeated from previous sections for ease of cross referencing.

Because there is no real body of literature on this topic, in Part C of this chapter I have drawn from whatever documentation I have been able to access. As a result, much of the following is sourced from work which has been authored or compiled by foreigners, sometimes for limited purposes, or from particular perspectives. This is not to suggest these sources are unreliable, only that they may focus on information relevant to a specific purpose, such as funding applications, design of NGO programs, or evaluation of donor projects, while omitting aspects of the topic which are unrelated to their purpose.

It is also worth noting that while much of the resulting documentation relates to the legal setting and legal profession generally, some will relate only to the public sector. Local participants in my study were drawn from both public and private sectors of Solomon Islands and Vanuatu, but there is little written material which relates specifically to the private sector. However, the interview data and my own observations suggest that lawyers often move between sectors, and that many new lawyers start out in the public sector. In that case, even material relating only to the public sector is likely to be relevant to many local lawyers at some time or another, and particularly to newer graduates.

Finally, as the environments studied are dynamic and constantly changing, the work below is intended to give a flavour of the settings within which local lawyers work, and the challenges they face, rather than to show 'what is' in a static sense.

a) The Make-up of the Legal Sector

This section provides available statistics and other observations that are relevant to understanding the work context of legal professionals in Solomon Islands and Vanuatu.

i) Size of the Profession

Neither Solomon Islands nor Vanuatu have reliable records of the number of lawyers in the jurisdiction, nor breakdowns regarding types of work or length of experience. Nonetheless, the estimates which do exist help to identify some of the challenges of the local legal environment and highlight important differences between local and foreign jurisdictions. As a starting point, it should be noted that nearly all the infrastructure of state law in Solomon Islands and Vanuatu, along with nearly all the lawyers, are based in the major town or towns, although the majority of both populations live in rural or remote locations.

In terms of numbers, the Solomon Islands Bar Association estimated that there were about 100 lawyers in that jurisdiction in 2011, with 42 in private practice and 48 in government or 'in-house' roles.⁶¹ The Vanuatu Law Society estimated in the same year that there were fewer than 120 lawyers in the jurisdiction, with about 40 in private practice and about 37 in government or 'in-house' work.⁶² 'In-house' in these jurisdictions generally refers to something like a statutory or regulatory body, as there are few businesses in these countries large enough to employ their own lawyers. It is not clear whether the estimates above are based on 'admitted lawyers', those with law degrees with or without admission, or simply those working as lawyers.

⁶¹ South Pacific Lawyers' Association (SPLA), *Needs Evaluation Survey for South Pacific Lawyer Associations (Final Report)* (October 2011) 14 <<https://www.southpacificlawyers.org/research>>. All statistics relating to lawyer numbers in Solomon Islands and Vanuatu are drawn from this source unless referenced otherwise. A more recent survey was conducted in 2014 but the report has not yet been finalised.

⁶² Ibid.

It is clear, however, that in both jurisdictions the professions are very small. In addition to the small overall numbers, the number of lawyers per head of population is also small. Exact comparisons are impossible, as local figures are based on the 'estimated number of lawyers in the jurisdiction'. Australian and New Zealand figures are based on the number of practising certificates issued. However, even inexact comparisons highlight differences in the prevalence of legal expertise in each society. In 2011, it was estimated that in Solomon Islands there was one lawyer to about 5718 people, while in Vanuatu the number was one lawyer to 1919 people.⁶³ This contrasts with New Zealand where there was one lawyer to about 400 people,⁶⁴ and New South Wales (NSW) in Australia where there was one lawyer to about 294 people.⁶⁵

Big differences can also be seen in the public/private divide. The number of lawyers in private practice per head of population, and the proportion of lawyers in private practice in each jurisdiction, both demonstrate significant disparity between local and overseas jurisdictions. For example, Solomon Islands is estimated to have one lawyer in private practice for each 13,616 head of population, and Vanuatu one for every 5614.⁶⁶ These figures contrast with the equivalent figures for Australia of one to 351,

⁶³ Numbers calculated by author using data provided by South Pacific Lawyers' Association, above n 61, and population estimates from Vanuatu National Statistics Office <<http://www.vnso.gov.vu/>> and Solomon Islands National Statistics Office <<http://www.statistics.gov.sb/>>.

⁶⁴ Geoff Adlam, 'New Zealand Law Society Snapshot of the Profession' (2015) 859 *LAW Talk* 8 <<http://www.lawsociety.org.nz/practice-resources/research-and-insight/practice-trends-and-statistics/lawyers-by-population-centre,-1-february-2015>>: estimated by author from 2004 — one lawyer to about 383 people; 2015 — one lawyer to about 410 people.

⁶⁵ Lawyer statistics from: Urbis for The Law Society of New South Wales, '2011 Law Society National Profile' (Final Report, May 2012) 4; NSW Population statistics from: Australian Bureau of Statistics, *ABS 3235.0 — Population by Age and Sex, Regions of Australia, 2011* (2012) <<http://www.abs.gov.au/ausstats/abs@.nsf/Products/3235.0~2011~Main+Features~New+South+Wales?OpenDocument>>. While more recent statistics are available for NSW and Australia, the above have been used as they compare best with the statistics available for Solomon Islands and Vanuatu, which are from 2011.

⁶⁶ South Pacific Lawyers' Association, above n 61.

and New Zealand with one to 409.⁶⁷ Clearly the populations of Vanuatu and Solomon Islands have substantially less access to private lawyers than their counterparts overseas.

Finally, the proportion of lawyers in the public and private sectors also shows significant differences. It appears from the 2011 estimates that the regional average for lawyers in government work in the South Pacific was around 40%; in Solomon Islands and Vanuatu, close to 50% of lawyers were in government work.⁶⁸ By contrast, in NSW fewer than 12% worked in government, and the average across Australia was 9.3%.⁶⁹ In New Zealand around 12–13% of lawyers worked in government.⁷⁰

Table 9. Comparative Lawyer Numbers by Jurisdiction

	Solomon Islands	Vanuatu	Australia	New South Wales	New Zealand
Number of lawyers	c100	c117			
Lawyers per head of population	1:5718	1:1919		1:294	1:400
Lawyers in private practice	c42	c40	62,000		10,500
Lawyers in private practice per head of population	1:5614	1:13,616	1:351		1:409
Percentage of lawyers working for government	40–50%	40–50%	9.3%	12%	12–13%

⁶⁷ Australian Bureau of Statistics, above n 65; Urbis, above n 65; Adlam, above n 64.

⁶⁸ South Pacific Lawyers' Association, above n 61, 14.

⁶⁹ Urbis, above n 65, 12.

⁷⁰ Adlam, above n 64, 12: About 20% work corporate/in-house, and 54% of those work in government.

Although statistics relating to the local legal profession can be difficult to access, and those which are accessible may be uncertain, incomplete or out of date, it is clear that the legal professions in both Solomon Islands and Vanuatu are tiny overall, there are very few lawyers per head of population, and private practice is far less prevalent and government practice far more prevalent than in neighbouring countries such as Australia and New Zealand. Each of these features may have significant implications for the work of lawyers, and hence for legal education needs.

ii) The Character of the Legal Sector

In addition, while the number of lawyers is small, the legal sectors of Solomon Islands and Vanuatu are broad and amorphous. Although this study focuses on those working in 'state law', this is not the only means of governing, resolving disputes or meting out justice in these jurisdictions. In keeping with the need to recognise 'law' as encompassing much more than merely state law, the legal sectors in both jurisdictions draw on a broad range of players to facilitate law and justice services. The government of Vanuatu, for example, defines the legal sector as

including both formal and *kastom* legal systems and agencies, as well as churches and civil society ... The role of Chiefs and traditional community leaders, including churches, in community justice, community awareness, settling conflicts and maintaining harmony is a critical element in the sector as a whole.⁷¹

A 2010 survey identified over 45 government offices, NGOs, civil society organisations and faith-based organisations as possible stakeholders in the area of access to justice in Vanuatu.⁷² More recently it has been noted that the

⁷¹ AusAID, *Stretem Rod Blong Jastis*, above n 53, 37.

⁷² Ibid 11.

policing, justice and community service sector is characterised by diversity. In Vanuatu, no sector has such a wide scope of related service delivery areas, nor such a complex grouping of independent arms of government, constitutional, statutory, line agencies and non-government bodies, some of which report to either different ministries for line management or budgetary purposes ... In addition to the state policing, justice and community services sector agencies, non-governmental organisations play an important role in delivering services. There are also non-state actors, for example, chiefs and religious leaders that play a significant role in delivering justice (in the broad sense of the term) locally.⁷³

Regarding Solomon Islands, it was stated in 2012 that there was 'broad concurrence among RAMSI personnel, AusAID staff, officials of the [Solomon Islands Government] and scholars that the current configuration of the country's law and justice institutions and agencies is unsustainable'.⁷⁴ A 2014 assessment noted that

the sector remains highly fragile and, post RAMSI transition, has seen an anticipated regression in some areas, for example the magistrates' court, with the draw down on advisers and removal of advisers from in-line roles. In this context progress towards objectives is challenging ... HR management, strategic planning and coordinated service delivery in a multi-agency sector remain a serious challenge in the justice sector.⁷⁵

More recent assessments have found that 'there are considerable ongoing problems with the legal and court system in Solomon Islands', and that major challenges in the justice sector include the following:

justice agencies struggle to fulfil their core functions; legal policy development coordination capacity is weak; access to justice, particularly

⁷³ Australian Government Department of Foreign Affairs and Trade, *Stretem Rod blong Jastis mo Sefti*, above n 21, 9.

⁷⁴ Marcus Cox, Emele Duituturaga and Eric Scheye, *Solomon Islands Case Study, Evaluation of Australian Law and Justice Assistance* (AusAID, December 2012) 6 <<https://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>>.

⁷⁵ Australian Government Department of Foreign Affairs and Trade, *Aid Program Performance Report 2013–14, Solomon Islands* (September 2014) 10–11 <<https://dfat.gov.au/about-us/publications/Documents/solomon-islands-appr-2013-14.pdf>>.

outside Honiara, remains a challenge; and across the sector there are persistent challenges in gender and social inclusion, data collection and usage, and human resource and financial management.⁷⁶

b) Experience, Seniority, Expectations, Expertise

As already discussed in previous chapters, Solomon Islands and Vanuatu are relatively new states with new legal systems, both of which relied on foreign lawyers for many years. Although there are increasing numbers of local graduates with relevant formal qualifications, it remains the case that there are few legally qualified local people in these jurisdictions.

i) Experience

There are not only few lawyers, there are also few with any lengthy experience. In both jurisdictions, inexperience of staff is noted as a major human resource issue. In Vanuatu, for example, 'most public sector agencies have insufficiently experienced legal officers to deal with complex cases, with the majority having less than five years' experience'.⁷⁷ This is reflected among participants in this study also, where 33 of 46 local lawyers had fewer than five years' experience, five had 5–10 years' experience, and only five had more than 10 years' experience. In Solomon Islands, the Chief Justice has noted that 'while there is a large number of new graduates and young lawyers in

⁷⁶ Coffey International Development and the Whitelum Group, *Solomon Islands Justice Program Design Document, July 2017 to June 2021* (Australian Government Department of Foreign Affairs and Trade) 6.

⁷⁷ AusAID, *Stretem Rod Blong Jastis*, above n 53, 9. Compare with Australia, where, as at October 2011, just under a third of the profession (31.2%) had been admitted for five years or less, including 10.5% who had been admitted in the prior year, while over a third of practising solicitors (36.8%) had been admitted for 15 years or more: Urbis, above n 65.

these legal offices, there is a marked absence in the middle senior category positions.

In addition, retaining those with experience has been a real problem.⁷⁸

A number of study participants from both Solomon Islands and Vanuatu noted that even 'experienced' local lawyers often have relatively little experience, especially in the public sector.

Now we have a senior legal officer but most seniors have left to go to greener pastures, that is, private practice.

The boss and the [department director] can give assistance, and some other senior lawyers, but most are not very experienced. They leave the office to go to private practice.

Local lawyers are the seniors, but most seniors have little experience. Lawyers in the office only go there to get experience then go out. They want to go to greener pastures and get more money.

You can ask a senior lawyer for help, but senior lawyers are only 3–4 years out, others leave when they get the experience.

Echoing this, a foreign participant noted that

Here you don't have a hierarchy of more senior people to mentor, teach or supervise. Experienced people move into private practice. You can't rely on [junior lawyers] just picking things up ... in many cases there is no-one there to teach them.

ii) Seniority

In addition, lawyers may be accelerated into very senior positions while still inexperienced. One local participant was Acting Director of a large public legal office in Vanuatu although not yet admitted to practice. Other local participants said:

⁷⁸ Sir Albert Rocky Palmer (Chief Justice), 'National Judiciary of Solomon Islands, Opening of the Legal Year 2013, State of the Judicature Report 2013' (21 January 2013) <<http://www.paclii.org/sb/court-annual-reports/2013-judicature-report.htm>>.

When I finished law school I was appointed acting Senior Legal Officer straight away — the legal section was empty and I was the only one.

In Vanuatu four new magistrates were appointed, three with PDLP only and one without even that.

I am head of [legal unit]. I automatically became the head of the unit as there were no other locals — previously there were only expat volunteers. I didn't know how to run the unit.

I began at DPP straight out of PDLP. Then in two years the Senior Prosecutor left so I became the Senior Prosecutor.

There's a high turnover in senior positions. Lawyers can become the boss very quickly, then after three years they go into private practice. Now there are problems for private practice also because the lawyers don't have the skills.

Foreign participants also mentioned accelerated seniority which occurs in these jurisdictions.

After LLB and PDLP graduates often go to very senior positions with no supervision and no training.

They get very senior very quickly, it's high stakes, depends on being robust, brave, courageous, pushing the boundaries.

He was a cop, got a degree and was thrown into police prosecutions. Then he was put with the DPP for mentoring, then the DPP leaves and he becomes DPP.

iii) Expectations

The expectations upon inexperienced lawyers can also be considerable in this environment, even in less senior roles. Local lawyers felt the weight of others' expectations:

If you are a lawyer, any legal stuff they throw it to you. For example, for this workshop I'm going to this afternoon, it's on intellectual property ... It's the government IT [information technology] department that's running the workshop but I get thrown the legal questions because I'm going, and I'm a lawyer. But I did not do intellectual property. During my years of study I did not take this subject. My family think the same. You're a lawyer, you know everything.

I was thrown into the deep sea and expected to learn how to swim ... which is why I hate going to court. It was very stressful. The Law School should look into that. Local lawyers are expected to come out of law school ready to take on cases.

One foreign participant noted the different expectations placed upon junior lawyers elsewhere:

[In local jurisdictions] when you go out there's more expected of you, they expect a fully qualified lawyer, you're out there working and immediately under pressure, performing challenging tasks without necessarily having the support needed. In Australia you'd be immediately supervised and you wouldn't be expected to do a lot at all ... In Australia you only get to be a lawyer by yourself after long, supervised practice ... At home you'd have a team of 10 lawyers negotiating some of these things.

iv) Expertise

In addition to general concerns regarding inexperience, there is a shortage of expertise in specific areas of local need. For example, both Solomon Islands⁷⁹ and Vanuatu have identified a 'lack of experience and expertise in policy development and the link between policy and legislative development in legal agencies'.⁸⁰ In addition, many roles and offices are themselves new. This has significant implications as there may be

⁷⁹ Personal conversation between author and Freddy Me'esa, Permanent Secretary, Ministry of Justice and Legal Affairs, Solomon Islands Government, Honiara, June 2016.

⁸⁰ AusAID, *Stretem Rod Blong Jastis*, above n 53, 9.

no institutional memory, past practice or predecessors' experience to guide the incumbents in learning on the job. Much of this is the result of these states themselves being new, with many offices only now being established.

The Vanuatu Law Commission, for example, was 'created' by legislation upon independence in 1980. However, steps toward its formal establishment did not commence until 2008, its first Secretary was appointed in 2011, and its first issues paper released in 2013.⁸¹ In Solomon Islands, the Law Reform Commission (LRC) has had periods of activity and inactivity.⁸² In advertising for a senior Adviser with 'the necessary confidence and capacity in law reform', recruiting documents note the 'further need to build the capacity of LRC staff, many of whom are junior or lacking in specific experience with a Law Reform Commission'.⁸³

⁸¹ Vanuatu Law Commission, *Annual Report* (2011) Government of Vanuatu <<https://lawcommission.gov.vu/index.php/zoo/annual-report>>; Vanuatu Law Commission, 'Review of the Dangerous Drugs Act [Cap 12] and the Penal Code [Cap 135]' (Issues Paper No. 01 of 2013, 15 March 2013) <https://lawcommission.gov.vu/images/pdf/dangerous_drugs_issues_paper.pdf>.

⁸² Solomon Islands Law Reform Commission 'is reported to have been inactive since the departure of its first chairman over five years ago': Peter MacFarlane and Chaitanya Lakshman, 'Law Reform in the South Pacific' (2005) 9(1) *Journal of South Pacific Law*, citing address by Justice H E Tuiloma Neroni Slade, 'Law Reform Potential in the Pacific Area' (Paper presented at the Australasian Law Reform Agencies Conference, Wellington, New Zealand, April 2004). While the Solomon Islands Law Reform commission is now active, its history highlights some of the difficulties of the region: 'Solomon Islands only instituted a Commission in the mid-1990s. It never received adequate funding to conduct proper research or employed sufficient personnel and essentially operated as a one-man band. Not surprisingly its output was meagre and after a couple of years it became dormant when its appointed head became a High Court judge.' Kenneth Brown, *Reconciling Customary Law and Received Law in Melanesia: The Post-Independence Experience in Solomon Islands and Vanuatu* (Charles Darwin University Press, 2005) 14. See also discussion of the difficulty of recruiting/managing for the Law Reform Commission: National Parliament of Solomon Islands, *Head 292 Justice and Legal Affairs* (2007) <<http://www.parliament.gov.sb/index.php?q=node/75>>.

⁸³ *Job Description, Institutional Strengthening and Technical Assistance to the Solomon Islands Law Reform Commission*, advertised by Commonwealth Secretariat (UK) (2014). <<http://thecommonwealth.org/sites/default/files/documents/vacancies/person-specification/Job%20Description.pdf>>.

c) Staffing and Performance Management

In addition to difficulties mentioned above, in both Solomon Islands and Vanuatu major challenges, particularly for public sector lawyers, are created by unfilled vacancies, absenteeism and an inability to manage these.

The extent of the problem of unfilled roles, including at the most senior level, should not be underestimated. In the Solomon Islands, vacant posts are a constant concern with often very long periods of hiatus.⁸⁴ The role of Registrar of Titles remained empty for two years, the role of Lands Commissioner for eight years,⁸⁵ and on multiple occasions the Chair of the Law Reform Commission has been vacant for years at a time.⁸⁶ Another post in legal policy development was advertised for two years without applicants.⁸⁷ In addition to a shortage of expertise, in Solomon Islands low salaries and poor conditions in government offices has meant that positions may 'sit vacant for years for lack of a suitable candidate prepared to work for the salary on offer, with the Solicitor-General and the Chairman of the Law Reform Commission being just two examples'.⁸⁸ A severe shortage of magistrates was put down to unwillingness to work under the poor conditions offered.⁸⁹

⁸⁴ Personal conversation between author and Freddy Me'esa, Permanent Secretary, Ministry of Justice and Legal Affairs, Solomon Islands Government, Honiara, June 2016.

⁸⁵ Ibid.

⁸⁶ MacFarlane and Lakshman, above n 82. See also AusAID, 'Delivery Strategy, Solomon Islands Justice Program (SIJP) July 2013 to June 2017' (2013) 50: 'LRC has not had a Chair since 2009 and currently the Chief Legal Officer position is vacant'. More recently, '[t]he Law Reform Commission has a new Chair. The Commission has been without a head since 2009, after the former Chair, Sir Frank Kabui was elected Governor General.': *Law Reform Commission has New Chair* (16 November 2014) Solomon Islands Broadcasting Commission <<http://www.sibconline.com.sb/law-reform-commission-has-new-chair/>>.

⁸⁷ Personal conversation between author and Freddy Me'esa, Permanent Secretary, Ministry of Justice and Legal Affairs, Solomon Islands Government, Honiara, June 2016.

⁸⁸ AusAID, 'Delivery Strategy, Solomon Islands Justice Program (SIJP) July 2013 to June 2017', above n 86, 24.

⁸⁹ 'Magistrates Court Faces Shortage of Judges', *Solomon Times* (online), 17 October 2013 <<http://www.solomontimes.com/news/magistrates-court-faces-shortage-of-judges/7975>>; see also *Chief magistrate says foreigners not the answer to magistrate shortage in Solomon Islands* (21 October

The Magistrates Court and registry had large numbers of vacancies. The poor public sector employment conditions are one of the reasons why good quality staff are neither attracted to the positions nor retained; many legal practitioners and other public justice sector staff ultimately seek employment in the private sector.⁹⁰

Centralised recruitment processes create bottlenecks to timely recruitment and, in many cases, even when an appropriate candidate has been identified, it can take up to a year for them to be formally engaged and paid.⁹¹ Junior lawyers in Solomon Islands told me they had been 'chosen' for government posts months earlier but were 'still waiting for our letters [of appointment]'.⁹²

In Solomon Islands, unexplained absenteeism in some government justice agencies was estimated to be as high as 30%. This has been identified as a key challenge to the justice sector:

Absenteeism and lack of performance management is an even greater problem than outstanding vacant positions. Anecdotally, some justice agencies have a daily unexplained absence of around 30%. Across the board, little if anything is being done to manage this. Building the skills of individuals and agencies is simply impossible where staff habitually fail to attend, or if they do attend, effectively do nothing. This grinds away morale and enthusiasm, with those that do reliably attend finding themselves lumbered with the work of their ineffectual colleagues. This creates a vicious

2013) ABC News <<http://www.abc.net.au/news/2013-10-21/an-chief-magistrate-says-foreigners-not-the-answer-to-magistrat/5035402>>.

⁹⁰ In addition, 'there are high rates of absenteeism in the Magistrates Courts and Registry, a large number of vacant positions, poorly skilled administration staff and a lack of professionalism.' Coffey International Development and the Whitelum Group, above n 76, 67.

⁹¹ AusAID, 'Delivery Strategy, Solomon Islands Justice Program (SIJP) July 2013 to June 2017', above n 86, 3, 24.

⁹² Personal communication with junior lawyers in Solomon Islands, April 2017.

*cycle whereby good staff seek to leave for more rewarding opportunities while sector performance deteriorates further.*⁹³

One Solomon Islands participant told me of the severe criticism he received from a judge, unfairly, when a colleague was absent from court without explanation. The judge was tired of lawyers from his department not appearing as scheduled and took his frustration out on those who *did* appear.

In addition to the above challenges, in Solomon Islands a failure to manage these issues was seen to exacerbate broader problems, in particular the movement of conscientious staff out of public service and into private practice.⁹⁴

In Vanuatu also there has been a noted 'lack of leadership across the sector and poor management structures,'⁹⁵ and 'generally weak', although improving, capacity for human resource management.⁹⁶ For employees 'there is frequently a sense of vulnerability when staff are absent, unable to tackle serious or complex cases or attracted to work elsewhere, and when leaders are new, inexperienced or unable to meet the diverse demands of the role'.⁹⁷ In addition, 'political influences in justice agencies, (i.e. six VPF [Vanuatu Police Force] Commissioners/Acting Commissioners in one year — two Ministers at the MJCS [Ministry of Justice and Community Services]), cut across efforts to change knowledge, attitudes and skills ...'.⁹⁸

⁹³ AusAID, 'Delivery Strategy, Solomon Islands Justice Program (SIJP) July 2013 to June 2017', above n 86, 25.

⁹⁴ AusAID, 'Delivery Strategy, Solomon Islands Justice Program (SIJP) July 2013 to June 2017', above n 86, Annex J: Background Paper 1 — Public Sector Governance in Solomon Islands — Situation Analysis, 53.

⁹⁵ AusAID, *Stretem Rod Blong Jastis*, above n 53, 48.

⁹⁶ Australian Government Department of Foreign Affairs and Trade, *Stretem Rod blong Jastis mo Sefti*, above n 21, 11.

⁹⁷ AusAID, *Stretem Rod Blong Jastis*, above n 53, 12.

⁹⁸ James McGovern, 'Review of Vanuatu Policing and Justice Support Program' (Report Prepared for Department of Foreign Affairs and Trade, April 2016) 22.

In Vanuatu, one of the country's largest legal departments recently went almost two years without a director, while external lawyers and junior staff took turns acting in the role.⁹⁹ The Attorney General resigned from office to stand for election to parliament, but returned to the role after an absence of some months.¹⁰⁰

The AG [Attorney General] stood for parliament, resigned as AG, didn't get elected, became AG again. The position was meant to be advertised but it wasn't because it was too political. The AG is like [named government officer]: a public scandal. They're not there. They're not doing their work.

A Vanuatu lawyer also spoke of a supervisor who simply didn't show up to work for long periods of time as he was busy with personal (political) matters. Absenteeism leaves the staff who do show up both overloaded with the work of absentees and, in many cases, without supervision or guidance. One local participant noted that *it's good to have good lawyers, but it's also good when they come to work.*

d) Admission to Practice

While the above difficulties are noted for those within the profession, entry to the profession itself can also be difficult, uncertain or downright chaotic. Uncertain practices relating to professional admission have been questioned previously,¹⁰¹ and were of concern to study participants from both Solomon Islands and Vanuatu.

⁹⁹ The Vanuatu Director of Public Prosecutions resigned in December 2013, and the post was only refilled in August 2015. Jane Joshua, 'British-Based Public Prosecutor Appointed', *Vanuatu Daily Post* (online), 3 July 2015 <http://dailypost.vu/news/british-based-public-prosecutor-appointed/article_0184bc79-d2b6-5ca9-b474-a55074128320.htm>; Thompson Marango, 'New Public Prosecutor to Takeover Office on 16 August', *Vanuatu Daily Post* (online), 5 August 2015 <http://dailypost.vu/new-public-prosecutor-to-takeover-office-on-august/image_a357d0f0-3556-5500-a55c-fddba062f5c6.html>.

¹⁰⁰ See also *Vanuatu Attorney-General Criticised for Taking Back His Post* (10 June 2013) Radio NZ <<http://www.radionz.co.nz/international/pacific-news/212769/vanuatu-attorney-general-criticised-for-taking-back-his-post>>.

¹⁰¹ See for example Jennifer Corrin Care, 'Finding the Right Balance in Plural Legal Systems: Training Lawyers in the South Pacific' (2006) 4(2) *Journal of Commonwealth Law and Legal Education* 171, 173.

i) Technical Matters

In both jurisdictions, the legal professions are 'fused' rather than distinguishing solicitors from barristers. In Solomon Islands, the *Legal Practitioners Act 1987* requires that the Chief Justice be satisfied that an applicant is a 'fit and proper person' before admission as a legal practitioner. In Vanuatu, under the *Legal Practitioners Act 1980* and the *Legal Practitioners Regulations 1996* a person is first conditionally registered as a legal practitioner, then after a period of supervised legal experience, and with proof that they are a fit and proper person, gains unconditional registration. That person may then apply to the Chief Justice for admission to practice as a barrister and solicitor.¹⁰² While admission in Vanuatu carries with it a certificate to practise, in Solomon Islands Practising Certificates are mandated only for those lawyers appearing before the High Court. However, even those so appearing sometimes do so without certificates.¹⁰³

In both jurisdictions, study participants raised concerns about delays in admission and lack of transparency regarding the time applicants must work prior to admission. In Solomon Islands, participants noted that private sector lawyers needed to wait much longer for admission than did public sector lawyers: *public sector lawyers get admitted faster, there's an exception for government lawyers*. Further, admissions procedures have sometimes been by-passed, particularly for foreign applicants, causing concern amongst local lawyers.¹⁰⁴

¹⁰² See the ruling of Justice Spear in *Hamel-Landry v Law Council* [2012] VUSC 119: 'The two tiered admission process undertaken in Vanuatu with a registered legal practitioner being admitted either conditionally or unconditionally has no proper basis in law.'

¹⁰³ Personal conversation between author and Solomon Islands Bar Association office holder, Honiara, October 2015.

¹⁰⁴ Personal conversation between author and Solomon Islands Bar Association office holder, Honiara, April 2017.

In Vanuatu, participants' concerns focused on the uncertainty of admission processes altogether. The Law Council does not meet regularly and delays in admission are common: *half the lawyers are not admitted because the Law Council's not meeting. They don't seek leave so they're acting illegally.* What appeared to be the first formal admission ceremony since 2011 took place in November 2015, but a number of lawyers who had hoped for admission were not included.¹⁰⁵ When asked if he had been admitted, a magistrate with four years' experience responded, *Nope, unfortunately no. I am not sure why, but we have asked the Chief Justice through our Chief Magistrate but no positive response. Don't know what he thinks ... Don't know why not.* Another young lawyer with three years' experience across private and public sectors had not worked under one supervisor for long enough to be sponsored for admission. Referring to her previous supervisor she said, *I called his private [named] law firm yesterday and asked if he is still practising to which they replied — no. I wanted to speak to him so he can make a letter for my Admission for the purposes of my current job and duties ... but he is not available.*

ii) Ineffective Reforms

Previous concerns regarding lengthy delays and uncertainty of admission requirements in Vanuatu had prompted the passage of legislation to deal with the problem. New arrangements for the profession, including the establishment of a more functional Law Council, along with a separate Admissions Committee empowered to approve Admissions, were envisaged by Vanuatu's 2005 *Legal Profession Act*. It was hoped the Act would 'relieve the profession of difficult tasks such as admissions that are currently

¹⁰⁵ Personal communications between author and two lawyers in Vanuatu, November and December 2015.

taking up to two years to be considered',¹⁰⁶ but over 10 years later the Act has not come into force, and admission practices remain uncertain.¹⁰⁷ The *Legal Profession Bill 2017*, currently before the Solomon Islands parliament, also aims to improve admission practices. However, an office holder of Solomon Islands Bar Association told me that while the legislation would be a good first step, the real difficulty is unlikely to be with having it passed in parliament, but with having it followed and enforced.¹⁰⁸

e) Professional Associations

Superficially, there are professional organisations in Solomon Islands and Vanuatu analogous to those present in other common law countries. However, lawyers I interviewed identified significant problems with their operations.

i) Membership

The Vanuatu Law Society (VLS) was established by legislation in 2010. Since that time, admitted lawyers have been required to register with the Law Society and pay an annual fee.¹⁰⁹ The Law Society itself was disparaged by local study participants: *the Law Society is useless, I got no response, you can't talk to them, the president is away, busy. The need for mentoring had been brought up with the Law Society but they're not forthcoming. Another lawyer was not even aware that there was a Law Society separate from the Law Council.*¹¹⁰

¹⁰⁶ AusAID, *Stretem Rod Blong Jastis*, above n 53, 6.

¹⁰⁷ *Legal Profession Act 2005* (Vanuatu).

¹⁰⁸ Personal conversation between author and Solomon Islands Bar Association office holder, Honiara, April 2017.

¹⁰⁹ *Law Society Act 2010* (Vanuatu) ss 4–5.

¹¹⁰ According to one foreign lawyer, the Vanuatu Law Society 'was formed in 2009 but in the subsequent 18 months, only managed to field a football team.': R B Cartledge, 'Thrown in at the Deep End' (2011) Issue 3 (October–December) South Pacific Lawyers Association, *newSPLash* 9.
<https://docs.wixstatic.com/ugd/0217f9_8b9ed8f97907487ab0535c89320a7286.pdf>.

The much longer established Solomon Islands Bar Association (SIBA) claims all Solomon Islands lawyers as members although there are only about 20 lawyers who *choose* to be members of SIBA by paying its annual fees.¹¹¹

ii) Activities

Participants were generally positive about the CLE programs on offer, when these were available. The CLE program mandated by the *Law Society Act 2010*¹¹² and organised by the VLS in 2011–13 was identified as very useful by participants, and appears to have been one of the main opportunities for lawyers in Vanuatu to access further learning. Unfortunately, it appears that these Law Society CLEs are no longer being offered.¹¹³ Most comments regarding SIBA related to its attempts to organise CLEs, and all mention of SIBA by participants was positive.

In neither jurisdiction was there any mention of the Law Society/Bar Association providing general professional support, representing members or creating a cohesive body of lawyers. Neither SIBA nor VLS have permanent offices, and neither has assured income.¹¹⁴ The newness of the VLS, and the lack of buy-in to SIBA, both militate against these professional associations having an active presence or a significant hands-on leadership role in providing services or support to local lawyers or to the public.

¹¹¹ Personal conversation between author and Solomon Islands Bar Association office holder, Honiara, October 2015.

¹¹² *Law Society Act 2010* (Vanuatu).

¹¹³ Personal conversation between author and staff member of Australian High Commission to Vanuatu, Port Vila, March 2017. See also Australian Government Department of Foreign Affairs and Trade, *Stretem Rod blong Jastis mo Sefti*, above n 21, 10.

¹¹⁴ South Pacific Lawyers' Association, above n 61, provides further information on the needs of local legal professional associations.

f) Conduct and Discipline

In both Solomon Islands and Vanuatu rules of professional conduct have been established to guide the behaviour of lawyers.¹¹⁵ Disciplinary bodies have been created to deal with breaches.¹¹⁶

i) Enforcement

In neither jurisdiction are the rules well enforced. In the Solomon Islands to 2011, 'no practitioner ha[d] yet been sanctioned' for reasons including 'lack of commitment by disciplinary committee members, lack of procedural rules as to how a hearing should proceed, and conflicts on the part of practitioners sitting on the disciplinary panel'.¹¹⁷ More recently, a number of younger practitioners in Solomon Islands have told me they are keen to see disciplinary action taken, but that SIBA is constrained from acting until a panel is convened by the Chief Justice.¹¹⁸ Similarly in Vanuatu, lawyer

¹¹⁵ The *Legal Practitioners (Professional Conduct) Rules 1995* (Solomon Islands) are lengthy and detailed. Among other things, they place duties on legal practitioners to observe the ethics of the legal profession and not to engage in conduct which is:

- illegal,
- dishonest,
- unprofessional,
- prejudicial to the administration of justice, or
- may otherwise bring the legal profession into disrepute.

The *Rules of Etiquette and Conduct of Legal Practitioners Order 2011* (Vanuatu) oblige lawyers to:

- uphold the rule of law,
- facilitate the administration of justice,
- not attempt to obstruct, prevent, pervert or defeat the course of justice, and
- use legal process only for proper purposes (among other things).

¹¹⁶ *Legal Practitioners (Amendment) Act 2003* (Solomon Islands) No 2 of 2003 provides that '[t]here shall be a Panel consisting of legal practitioners appointed by the Chief Justice for the purposes of constituting a disciplinary committee to investigate any complaint on the conduct of any legal practitioner', yet the first panel was not convened until 2012. See also Peter MacFarlane, 'Book Review of Ethics Professional Responsibility and the Lawyer by Duncan Webb' (2003) 7(1) *Journal of South Pacific Law* <<https://www.usp.ac.fj/index.php?id=13246>>.

¹¹⁷ South Pacific Lawyers' Association, above n 61, 27.

¹¹⁸ See also requirements of *Legal Practitioners Act 1987* (Solomon Islands) s 8. In 2016 and 2017 I have met with a number of former USP students in both Solomon Islands (group) and Vanuatu (individuals). These meetings were not part of the formal study reported above and so are included in this Part C as 'other sources.'

participants stated that they would like to see more disciplinary action proceed. Some feel that their personal reputation, and the reputation of the profession, is tarnished by failure to act, but no action can be taken unless and until the Law Council meets: *Complaints about lawyers should go to the Law Council, the Chief Justice is in the Judicial Services Commission and the Law Council, but they keep passing it back and forth.*

While in 2012 one lawyer in Solomon Islands was refused a Practising Certificate by the Registrar of the High Court after release from gaol, it is unclear whether this matter was ever dealt with by the Disciplinary Panel.¹¹⁹ At the opening of the 2013 legal year, Chief Justice Sir Albert Rocky Palmer stated, 'I cannot over stress now that the delay in having disciplinary hearings conducted and processed through is making a mockery of those rules.'¹²⁰ In Vanuatu it is difficult to find records of lawyers being disciplined,¹²¹ although in 2011 it was reported that 'there are some serious complaints now with the [Law] Council'.¹²²

¹¹⁹ 'Panel Appointed to Look into Ashley's Case', *Solomon Star News* (Honiara), 11 May 2012 <<http://www.solomonstarnews.com/news/national/14594-panel-appointed-to-look-into-ashleys-case>>. A 2003 amendment to the *Legal Practitioners Act* provides for the establishment of the Disciplinary Panel (s8), yet the first panel was not convened until 2012. It is unclear whether or not the Disciplinary Panel made a decision on this matter. The *Solomon Star News* has reported that Ashley 'has been unable to practise since he came out of jail after the High Court registrar refused to renew his practising certificate.': Daniel Namosuia, 'Ashley Joins Forum', *Solomon Star News* (Honiara), 8 October 2012 <<http://www.solomonstarnews.com/news/national/16128-ashley-joins-forum>>. See also judgement of Palmer C J in *Regina v Ashley* [2012] SBHC 10; HCSI-CRC 178 of 2011 (3 February 2012) para 16: 'I do not want to prejudice any future hearing before the Disciplinary Panel and outcome of your case but your file will be forwarded in due course for their consideration.'

¹²⁰ Sir Albert Rocky Palmer, above n 78.

¹²¹ The annual reports required of the Law Council are not accessible. However, a former member of the Disciplinary Committee told me that cases have been heard in the past. A judge of the Vanuatu Supreme Court also told me that he had 'heard of some cases having been heard previously'.

¹²² South Pacific Lawyers' Association, above n 61, 28. See also Peter MacFarlane, 'The Importance of Ethics and the Application of Ethical Principles to the Legal Profession [Working Paper]' (2002) 6(2) *Journal of South Pacific Law* <<http://www.pacii.org/journals/fJSPL/vol06/8.shtml>>: 'In the present framework it would be exceedingly difficult and most unlikely for a lawyer who is abusing their position of trust or who is in breach of their ethical obligations to their client to be disciplined.' While this is a 2002 observation there is no evidence that the situation is any different now.

ii) Reform Initiatives

A 'Model Professional Rules' project, funded by the Law Council of Australia,¹²³ has not yet achieved the improved regulation it hoped for in either Solomon Islands or Vanuatu. The first phase of the project included a comparative analysis of existing rules in South Pacific countries, and identified existing shortcomings. These included definitional issues leading to difficulty of interpretation; categorisation issues which left gaps in the conduct regulated; and nexus issues where there is no clear connection between findings of misconduct and disciplinary consequences.¹²⁴ Further issues relating to the administration and determination of complaints were also identified. Currently both Solomon Islands and Vanuatu are working to improve the way complaints are dealt with and professional discipline is enforced. In Solomon Islands, 2011 recommendations for doing so have not yet come to fruition, but SIBA hopes legislation to this effect will be passed in 2017.¹²⁵ The Law Council of Vanuatu has recently appointed a Disciplinary Committee, which appears to have been a response

¹²³ See Nilesh Bilimoria, 'Choices for the South Pacific Region's Bar Associations and Law Societies?' in Petra Butler and Caroline Morris (eds), *Small States in a Legal World* (Springer, 2017) 245; and, *Australian Government Funding — Development of Legal Profession in the Pacific* (12 October 2011) Pacific Islands Law Officers' Network (PILON) <<http://www.pilonsec.org/component/content/article/3-pacific-law-and-justice-news/pacific-law-and-justice-news/88-australian-government-funding-development-of-legal-profession-in-the-pacific?Itemid=537>>.

¹²⁴ 'South Pacific Model Conduct Rules Update' (2011) Issue 11 (December 2014) South Pacific Lawyers Association *newSPLash* 4 <https://docs.wixstatic.com/ugd/0217f9_5b9347f46f1a4d9d8c865c09fe8b43c3.pdf>.

¹²⁵ Conversation between author and Solomon Islands Bar Association President, Katalaini Zirui, Honiara, March 2017; Ministry of Justice, Solomon Islands, *Review of Legal Profession Regulations in the Solomon Islands — Scoping Study Report* (Law Council of Australia, 7 November 2011) <https://www.academia.edu/16318102/Review_of_Legal_Profession_Regulations_in_the_Solomon_Islands_-_Scoping_Study_Report>; *Solomon Islands Bar Association to be Fully Regulated* (19 January 2015) Solomon Islands Broadcasting Corporation <<http://www.sibconline.com.sb/solomon-islands-bar-association-to-be-fully-regulated/>>.

to a court judgement calling for disciplinary action against lawyers, but no cases have yet been heard.¹²⁶

g) Social, Economic and Political Challenges

There are many distractions for lawyers in the local legal environment which can work against both professional behaviour and professional attitudes to law. Some of these issues have been discussed in previous sections, and some are further discussed below. For many local people, becoming a lawyer means not just entering a new profession, but transitioning into a whole new way of life. Many law students and lawyers will be moving from subsistence economies into cash-based economies. They will move from rural to urban areas. They will move away from their local communities where they are closely interrelated and subject to the strictures of *kastom*, to towns where their close peers are undergoing similar adjustments.¹²⁷

i) Economic Imperatives

In both Solomon Islands and Vanuatu, a number of economies run side by side. In both jurisdictions the largest is a subsistence or traditional economy which covers the majority of the population.¹²⁸ Many local lawyers coming from subsistence economies

¹²⁶ Jane Joshua, 'Law Council Appoints Disciplinary Committee', *Vanuatu Daily Post* (online), 21 February 2017 <http://dailypost.vu/news/law-council-appoints-disciplinary-committee/article_d5a9f17d-0360-5939-ac8d-783b5190ba45.html>; *Public Prosecutor v Pipite* [2016] VUSC 100 [21] (Chetwynd J): 'Personally, I believe all the lawyers involved should face some sanction. I thought briefly about contempt proceedings but came to the conclusion disciplinary proceedings would be the preferable method of dealing with the lawyers. That is a matter for the Law Council.' No cases have yet been heard by the Disciplinary committee: Email to author from member of Disciplinary Committee, December 2017

¹²⁷ A law student in Solomon Islands told me: 'They all know each other. Most of them have studied together away from home. Now they work together away from home. They think they're better than other people. They're influenced by one another.' Personal conversation between author and USP law student, Honiara, October 2015.

¹²⁸ 'Vanuatu, along with our two immediate neighbours, Papua New Guinea and the Solomon Islands, is among the last places in the world where the "subsistence economy" — which I prefer to call the "traditional economy" — still outweighs the cash economy in terms of providing livelihoods for the population. While today even the most isolated rural dweller needs cash to pay for tea, sugar, kerosene, metal implements, boat, ship or truck transport, and school fees, the participation of the great majority of people in the traditional economy is far more important and pervasive than their involvement with

are thrust into the urban economy with the move to university, or with their first legal jobs. They face the financial pressures of living independently in urban areas, but still with low incomes. In addition, having the position of lawyer may itself create additional expectations and demands from family and community, as discussed in the following section. Those in the public sector are also likely to earn less than those in private practice, creating a desire to 'move to greener pastures'¹²⁹ which private practice is often assumed to provide. However, as one participant observed, the *pay is very bad in the public service compared to the workload, people work for government to get a rent allowance.*

The move to the money economy, the high costs of urban living, poor pay and increased demands on their resources may all tempt local lawyers to find alternative or additional means to improve their financial positions. A local and a foreign participant, respectively, made the following comments:

Lawyers and magistrates end up in gaol because of low wages, they do things against their profession.

Young lawyers can very easily fall to the temptation of becoming an entrepreneur, and become heavily involved and committed in entrepreneurial activities. Several of our local graduates here are in trouble with this now.

the cash economy.' Ralph Regenvanu, 'The Traditional Economy as Source of Resilience in Vanuatu' (Paper presented at the Lowy Institute Conference 'The Pacific Islands and the World: The Global Economic Crisis', 3 August 2009), edited and republished at <http://milda.aidwatch.org.au/sites/default/files/Ralph%20Regenvanu.%20Traditional%20economy%20as%20a%20source%20of%20resistance%20in%20Vanuatu.pdf>>.

¹²⁹ See above Part C, b) i).

ii) *Wantokism*

As discussed in Chapter Three, Pacific societies have traditionally been strongly based upon clan and kinship systems, and in Melanesian countries these remain an important part of the social structure.¹³⁰ In Solomon Islands and Vanuatu, the *wantok* system is particularly strong. *Wantok*, the Pijin and Bislama term from the English 'one talk',¹³¹ is not simply a grouping of same language speakers. In fact, at the term's broadest, *wantoks* may not even speak the same language, but may be more loosely aligned, for example, from the same island, the same country, or even simply 'Melanesian'.¹³²

Wantokism refers to the mutual duties and responsibilities which exist between *wantoks*.¹³³ These can be extremely demanding. *Wantoks* must help one another by providing food, shelter and cash, and must share the advantages and benefits they acquire. To deny one's *wantoks* is a grave matter which generates social repercussions and may threaten a *wantok's* place within the community.¹³⁴ In Melanesia, family responsibility or *wantokism* means that 'a request from a family member cannot be denied'.¹³⁵

Wantokism is recognised as a source of conflict and tension in the workplace by some local lawyers. Socially embedded obligations can be characterised as nepotism or as corruption. A local lawyer writing for the Pacific Young Lawyers' Forum commented:

¹³⁰ Narokobi, above n 36, Chapter 2.

¹³¹ Solomon Islands Historical Encyclopaedia 1893-1978, above n 52.

¹³² For example, a bill introduced into the Vanuatu Parliament in June 2010 in support of independence for West Papua was entitled '*Wantok Blong Yumi Bill*' (Our *Wantok's* Bill).

¹³³ Gordon Leua Nanau, 'The *Wantok* System as a Socio-Economic and Political Network in Melanesia' (2011) 2(1) *OMNES: The Journal of Multicultural Society* 31.

¹³⁴ David Lea, *Melanesian Land Tenure in a Contemporary and Philosophical Context* (University Press of America, 1997) 3.

¹³⁵ Sophie Fisher, 'Solomon Islands Social Welfare Needs Analysis' (Research Paper, International Social Service Australia, 2012) <<http://www.iss.org.au/wp-content/uploads/2012/06/Solomon-Islands-FINAL-Full-Doc.pdf>>.

the *wantok* system is very common in Solomon Islands ... the position as a public servant is used to serve the benefit of relatives, family members and friends. It is a form of corruption that has been imprinted in the minds of the general public. As long as one is a public servant you have to serve your *wantoks* despite the fact that you have certain codes of conduct to abide by. So it's a conflict between performing to the expected standard and using the Office for the best interest of *wantoks*.¹³⁶

In addition, state-imposed responsibilities which conflict with and are antithetical to *wantok* obligations may also be seen by Melanesian lawyers as less significant. *Wantok* obligations constitute one's cultural identity. They may well be felt more strongly than any external obligation imposed by state law or related to a new professional identity. To illustrate, a study participant stated: *When you have close relatives, you will have conflict. Kastom obligations say 'you are wantok, if you don't do this you are neglecting me. What I do for you, you must do for me.'* *Wantoks do not understand the legal profession.* For those in Melanesia, it may be more important to have *wantoks* onside and supportive than to be in line with the demands of state law and the legal profession. This calculation could also involve anticipation of the likely consequences of transgressions against one or the other.

iii) Political and Governmental Issues

Introduced Westminster-style governments, which rely on foreign-style political party systems to function, continue to be unstable in both Solomon Islands and Vanuatu. It is rare that a single party has a majority. At times it is not even clear which members of parliament do and do not support the government. Votes of no confidence are

¹³⁶ Elizabeth Tito Kuautonga, 'Experiences as a Young Lawyer in the Pacific: Discussions at the Pacific Young Lawyers' Forum' (2011) Issue 2 (July–September) South Pacific Lawyers Association *newSPLash* 6, 7 <<http://www.southpacificlawyers.org/files/uploads/newSPLash%20Issue%202.pdf>>. See also Peter Larmour, *Interpreting Corruption: Culture and Politics in the Pacific Islands* (University of Hawaii Press, 2012).

common, allegiances are swiftly changed, and court actions are frequently used in an attempt to change governments. Instability has been the norm, and the desire to attain or maintain power often outweighs any commitment to values or a party platform.¹³⁷ Inaction related to the filling of vacancies in government offices and key bureaucracies, discussed above, needs to be understood in view of this much wider political context of ongoing instability.

The *wantok* system discussed above spreads into the political system, as explained by a Solomon Islands scholar:

In Solomon Islands leaders are chosen not because of competence and character but because of tribal connections, blood links, nepotism, bribery and personal favours. One explanation for this is the mix between traditional and modern systems of leadership ... While distribution of wealth through competitive reciprocity is part of custom, in the modern context it is associated with vote buying, bribery and corruption. Most elected leaders are caught in a dilemma in determining whose interest they represent because within their own electorate they are closely tied to their *wantoks*, relatives and friends ... While the electorate represents the public sphere, in most cases it comprises a cobweb of extended family networks to which an elected leader subscribes.¹³⁸

Both Solomon Islands and Vanuatu are undertaking activities aimed at decreasing the occurrence and reducing the impact of corruption and mismanagement, but they remain ongoing concerns.¹³⁹ Leadership codes are frequently alleged to be breached,

¹³⁷ See, eg, annual reports in *The Contemporary Pacific* including Howard van Trease, 'Political Reviews, Melanesia, Vanuatu' (2017) 29(2) *The Contemporary Pacific* 361; Gordon Leua Nanau, 'Political Reviews, Melanesia, The Solomon Islands' (2015) 27(2) *The Contemporary Pacific* 528.

¹³⁸ Joseph D Foukona, 'Democracy and Development through the Electoral System in Solomon Islands: Social and Economic Impacts' (2006) No 70 *Development Bulletin* 109, 109 <<https://crawford.anu.edu.au/rmap/devnet/devnet/db-70.pdf>>. See also Joseph D Foukona, 'State Powers and Institutions in Solomon Islands' *Developing Democracy* (2002) No 60 *Development Bulletin* 50 <<https://crawford.anu.edu.au/rmap/devnet/devnet/db-60.pdf>>.

¹³⁹ In Solomon Islands an *Anti-Corruption Bill 2016* is presently before parliament (December 2017). In addition, according to Transparency International, the 'government has recognised the corruption

but breaches are rarely disciplined.¹⁴⁰ Members of parliament and high level public servants may themselves pressure lawyers to act unprofessionally, and to provide ways around strict legal requirements. It is worth repeating a couple of earlier comments by study participants:

It's very difficult to deal with politicians. We give advice, we say 'this is the law', 'this is it' but they want to try to find some other way around it. 'What if we were to go this way? What if we were to go this way?' I say, 'No, this is the law.' Sometimes we provide advice but they go on the other way. But if they do this and find out the law is broken, then they come back to us again ... Usually dealing with the government departments is good because they're not political appointments. But it's within the ministry, the ministers don't like to follow.

Leaders are not applying the law, they look for and use loopholes. Lawyers allow the loopholes. For example, if the Attorney General advises government and allows a decision which allows government to use a loophole, that is not good. Then loopholes do not get changed or closed. For example, a minister is given a discretion, the discretion is meant to be used for the good of the country, but now it is used for personal reasons.

challenges facing the country ... and is committed to address it with the development of an anti-corruption strategy, a freedom of information policy, the enactment of an anticorruption bill and a whistleblower protection bill as a precursor to a right to information bill, as well as reform to strengthen existing anti-corruption legislation and institutions.' Marie Chêne, *Solomon Islands: Overview of Corruption and Anti-Corruption* (Transparency International, 23 January 2017) <https://www.transparency.org/files/content/corruptionqas/Country_profile_Solomon_Islands_2017.pdf>.

Re Vanuatu, the latest National Integrity Assessment, conducted in 2014, states that almost every area 'is currently undertaking activities to strengthen various aspects of capacity and governance. If all of these activities are completed then it can be expected that the next assessment of Vanuatu's National Integrity System will show considerable improvements. Transparency International Vanuatu, *National Integrity System Assessment 2014* (2014) 15 <https://www.transparency.org/whatwedo/nisarticle/vanuatu_2014>.

¹⁴⁰ See, eg, Bob Makin, *Vanuatu Daily News Digest — Leadership Code Ignored* (16 January 2015) Vanuatu Digest <<https://vanuatudigest.com/2015/01/16/vanuatu-daily-news-digest-leadership-code-ignored/>>: 'Transparency Vanuatu's National Integrity System has identified a complete absence of enforcement of the Leadership Code Act. Despite a number of Ombudsman reports recommending further action to be taken where breaches of the Leadership Code have been apparent, no prosecutions have been initiated.' And see Nanau, 'Political Reviews, Melanesia, The Solomon Islands', above n 137.

Lawyers may themselves be drawn into dabbling in politics for noble or ignoble reasons: to access finances for themselves, or to serve communities thought to be ill-served by current distributions of power and resources. More dangerously, there is temptation of corruption, bribery, theft and dishonesty, encouraged by poor role models, and, often, a lack of disciplinary consequences.¹⁴¹ As one local study participant commented:

Accepting bribes, 90% of lawyers will encounter such issues. They'll be offered bribes by government or some official ... It's very common in Pacific Island countries ... Dealing with corruption, bribes, conflict of interest, external pressures. It's common generally, even with policies and bills, they'll use lawyers to turn down bills, or delay them, these kinds of tactics.

Political life may also be seen as a way to access large sums of money through accessing positions of power. For example, 14 Ni-Vanuatu Members of Parliament (MPs) were charged with corruption in 2015.¹⁴² Following conviction but prior to sentencing, the Speaker, in the role of acting President, pardoned all involved, including himself, ostensibly 'to maintain peace and unity in Vanuatu'.¹⁴³ The pardon was subsequently revoked and the convicted MPs gaoled.

The wrongly pardoned politicians, along with three lawyers who advised on the pardon, were then also charged with conspiracy to defeat the course of justice.¹⁴⁴ The gaoled politicians blamed lawyers for providing incorrect advice to the Speaker, and

¹⁴¹ See above Part C, f) 'Conduct and Discipline'.

¹⁴² Howard van Trease, 'Political Reviews, Melanesia, Vanuatu' (2016) 28(2) *The Contemporary Pacific* 473.

¹⁴³ Liam Fox, *Vanuatu's Acting President Uses Interim Executive Powers to Pardon Himself and 13 Others Convicted of Bribery* (11 October 2015) ABC News Online <<http://www.abc.net.au/news/2015-10-11/convicted-vanuatu-acting-president-pardons-himself-13-others/6844372>>.

¹⁴⁴ Thompson Marango, 'Bribery Case Timeline', *Vanuatu Daily Post* (online), 2 January 2016 <http://dailypost.vu/news/bribery-case-timeline/article_cf5696a5-3fa8-56a5-a301-323a6ef30621.html>.

for not competently defending them on corruption charges.¹⁴⁵ The judgement itself in the conspiracy case recommended that all lawyers involved should be disciplined.¹⁴⁶

This case was used by the Prime Minister of Solomon Islands as a warning for politicians in that jurisdiction, whom he alleged to be behaving similarly. The Prime Minister told parliament that the 'government was fully aware of Opposition MPs sending text messages to Ministers trying to lobby them with lucrative amount[s] of money'.¹⁴⁷

The poor functioning of the introduced system of government, abuses of office, and slurs made upon the legal profession by those holding high office are all counter-productive to building a climate of respect for rule of law. This climate adds to misunderstandings of or misgivings about the authority of state law generally, and may contribute to a lack of commitment to that legal system from the legal professionals required to administer it.

In summary, cultural, social, economic and political factors all have the potential to place additional demands on lawyers, and each of these concerns was mentioned by study participants in both Solomon Islands and Vanuatu. These demands are an everyday part of the legal context within which local lawyers work, and present challenges which local lawyers need constantly to navigate. On top of these challenges, lawyers also face challenges related to workplace infrastructure, including lack of

¹⁴⁵ Ibid.

¹⁴⁶ *Public Prosecutor v Pipite* [2016] VUSC 100 [21] (Chetwynd J); Thompson Marango, 'All Lawyers Involved in Pardon Should be Disciplined: Judge', *Vanuatu Daily Post* (online), 18 August 2016 <http://dailypost.vu/news/all-lawyers-involved-in-pardon-should-be-disciplined-judge/article_b0e3d84c-ceb8-5bc6-b962-ceaa22050115.html>.

¹⁴⁷ Len Garae, 'Sogavare Uses Jailed Vanuatu MPs as Lesson for Opposition', *Vanuatu Daily Post* (online), 20 November 2015 <http://dailypost.vu/news/sogavare-uses-jailed-vanuatu-mps-as-lesson-for-opposition/article_e5ad0c36-d3bb-562a-b3a1-5db83bb472b1.html>.

administrative and support services, information and communications technology, and research resources, as discussed in the following section.

h) The Workplace Infrastructure

i) Support and Administration

Some courts, lawyers and legal offices in Solomon Islands and Vanuatu are no doubt orderly and well managed. Study participants, however, frequently reported working in a state of disorganisation, sometimes bordering on chaos. One lawyer in Vanuatu spoke of resourcing difficulties in a major government legal office: *there were administrative problems with the [named office], there were no funds to pay the light bills.* Another major government office has recently been re-housed with Australian aid, with the following comments made at the opening: 'Many of you will remember the state of our old building. Rain poured through the roof, the plaster peeled, electricity failure caused by water and rotting archives ... Many files were rotten and dusty and have been sitting dormant, some since the 1970s.'¹⁴⁸

Some offices have little organisational or administrative support. Lawyers may have no system of filing and no resources or support to assist in implementing one. One study participant told me that organisation was crucial for lawyers, enabling them to stay on top of their work and keep their papers properly filed. Yet he himself didn't really know how to file on computer, and didn't have a filing system or filing cabinet but *was hoping to get one.*

¹⁴⁸ Jane Joshua, '30-Year-Old Prosecution Files Finally Archived', *Vanuatu Daily Post* (online), 16 November 2014 <http://dailypost.vu/news/local_news/year-old-prosecution-files-finally-archived/article_b54c78e2-2497-5e14-8527-7a4844de27d3.html>.

Lacking administrative assistance, other lawyers deal with minutiae not normally considered 'legal work'. For example, one lawyer in Vanuatu said, *if we get a prosecution witness, especially from the outer islands, I need to organise their food, transport and accommodation*. Likewise, a lawyer in Solomon Islands *went to the ship to check on the food* when members of his department were travelling outside the capital. In helping to manage functions he might *write a letter to ensure the pigs are delivered, and accommodation booked*.

Poor organisation in individual offices both compounds, and is compounded by, a lack of organisation in courts and court registries. In Solomon Islands in 2012, for example, only 40% of planned High Court circuits and only 75% of Magistrates' Court circuits actually went ahead.¹⁴⁹ Over a third of available Magistrates' Court trial days had no allocated trials.¹⁵⁰ While there has been significant improvement in the higher courts, in the Magistrates' Courts

Adjournments are common — lawyers claim listing practices are poor and magistrates lack confidence to decide matters; magistrates claim lawyers appear unprepared or do not appear at all. Backlogs lead to prisoners being on remand for longer periods than is necessary. The limited use of Civil Procedure Rules makes it difficult for Magistrates to properly coordinate cases. The Honiara Magistrates Court Registry experiences significant administrative and capacity challenges relating to filing documents, providing advice on court process, understaffing and absenteeism.¹⁵¹

¹⁴⁹ AusAID, 'Delivery Strategy, Solomon Islands Justice Program (SIJP) July 2013 to June 2017', above n 86, 20.

¹⁵⁰ AusAID, 'Delivery Strategy, Solomon Islands Justice Program (SIJP) July 2013 to June 2017', above n 86, 27.

¹⁵¹ Coffey International Development and the Whitelum Group, above n 76, 65, citing Linda Kelly, Daniel Woods and Ali Tuhanuku, *The Mid-Term Review of the Solomon Islands Justice Program* (August 2015); with reference to improvements in higher courts see Coffey International Development and the Whitelum Group, above n 76, 65 n 17.

One local study participant noted that *in developed legal systems there are separate budgets for the judiciary. That's not so in Solomon Islands. If the budget is small then the courts' money is small, especially at lower levels. They just don't hear cases.*

A judge in Vanuatu had over 40 manila folders neatly arranged on his office table during our interview. He said he would not give a file to court staff while the matter was ongoing, as he *may never get it back. It could end up anywhere.* Case and practice management was an area of concern in Vanuatu where 'case management procedures across the government legal sector are generally poor ... Poor listing practices by the courts ... compound this situation as well as the lack of appropriate IT systems across the board to support practice management'.¹⁵² More recently, Australian aid has funded an IT update for the Vanuatu Supreme Court, and a new data management system being rolled out in a number of justice agencies in Solomon Islands.¹⁵³

ii) Information Technology (IT)

The ready availability in some overseas jurisdictions of electronic resources for research, and indeed for all communications, is not mirrored in Solomon Islands or Vanuatu. A 2015 report by the International Telecommunication Union¹⁵⁴ ranked Solomon Islands at 139th and Vanuatu at 125th globally, using the ICT Development

¹⁵² AusAID, *Stretem Rod Blong Jastis*, above n 53, 6.

¹⁵³ For Vanuatu, a new system was introduced in 2015, which it is anticipated 'will automate time-consuming manual processes from assigning cases and producing orders and judgments; it introduces a document management repository where users can draft, view and save documents and emails; and deliver a wide number of reports including cases, list and diary information and financial information.': *LexisNexis Wins Vanuatu Supreme Court Tender* (30 June 2015) LexisNexis <<http://lexisnexis.com.au/media-centre/legal-research-and-innovation/media-release-2015-06-30-lexisnexis-wins-vanuatu-supreme-court-tender.html>>.

For Solomon Islands, a new data management system is also being rolled out across a number of agencies: Coffey International Development and the Whitelum Group, above n 76, 74–5.

¹⁵⁴ ICT Data and Statistics Division, Telecommunication Development Bureau, International Telecommunication Union, *Measuring the Information Society Report 2015* (International Telecommunication Union, 2015) <<http://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2015/MISR2015-w5.pdf>>.

Index (IDI).¹⁵⁵ This compared with Australia at 13th and New Zealand at 16th, demonstrating the divide between these states. Even within the Asia-Pacific region, Solomon Islands and Vanuatu are poorly ranked, and both have IDIs well below the average even for developing countries.

While almost all lawyers in Solomon Islands and Vanuatu are reported to use computers in their work,¹⁵⁶ this should not be confused with easy access to electronic communications. In both jurisdictions, internet access is slow, unreliable and costly. In Solomon Islands, for example, although almost all lawyers use computers in their practices, they are mainly used for word processing. A smaller number have emails, and an even smaller percentage is connected to the internet and use their computers for research.¹⁵⁷ While lawyers, as predominantly urban professionals, are likely to be amongst the most technologically connected groups of the populations of Solomon Islands and Vanuatu, their access is still both minimal and difficult. Internet penetration rates are around 8% in Solomon Islands and 11.3% in Vanuatu, compared to corresponding statistics of 94.1% in Australia and 94.6% in New Zealand.¹⁵⁸ While study participants identified research and communications as some of the main tasks they undertake in their work, such work will clearly be very different from the same activities undertaken in more technologically developed countries.

¹⁵⁵ Ibid 39. The ICT Development Index (IDI) is a composite index that combines 11 indicators into one benchmark measure that can be used to monitor and compare developments in information and communication technology (ICT) between countries and over time.

¹⁵⁶ South Pacific Lawyers' Association, above n 61, 5.

¹⁵⁷ Ibid 14–15.

¹⁵⁸ *Internet users in Oceania* (November 2015) Internet World Stats: Usage and Population Statistics <<http://www.internetworldstats.com/stats6.htm>>.

iii) Research Resources

Access to research resources has already been touched on in Part B of this chapter. In addition to challenges arising from sparse IT access as outlined above, there are many other difficulties for lawyers trying to conduct research in Solomon Islands and Vanuatu. Relevant primary sources may be difficult to identify, with many areas of law uncertain and still made up of a combination of local case law and legislation, and overseas sources.¹⁵⁹ As discussed in Chapter Three, in both Solomon Islands and Vanuatu, *kastom* may form part of the law, but the content of *kastom* is diverse, dynamic and generally unwritten,¹⁶⁰ and its application is often uncertain and contested.¹⁶¹ Further, even where local primary sources of law are publicly available, they may be difficult to find in updated form. The latest consolidations of legislation occurred in 1996 for Solomon Islands and in 2006 for Vanuatu. Accessibility is improving, however, especially via the Pacific Islands Legal Information Institute (PacLII) which is discussed in more detail below. While it has often been difficult to access the instruments necessary for updating and using legislation, such as gazettes, Hansards and digests, both jurisdictions have recently produced or revised an index of legislative changes, available on PacLII.¹⁶² However, such indices may themselves not

¹⁵⁹ Corrin Care and Farran, above n 59; Jennifer Corrin Care (ed), *Sources of Law in the South Pacific Region. Journal of Pacific Studies, Volume 21* (The University of the South Pacific, 1997); Jennifer Corrin Care, 'Bedrock and Steel Blues: Finding the Law Applicable in Vanuatu' (1998) 24 *Commonwealth Law Bulletin* 594.

¹⁶⁰ 'Customary law was originally largely unwritten law, although some of it was reduced to writing under European influence.': Corrin Care and Farran, above n 59, 302.

¹⁶¹ See, eg, Jennifer Corrin Care, 'Customary Law and Women's Rights in Solomon Islands' (2000) No 51 *Development Bulletin* 20; Peter MacFarlane, 'The Application of Custom in South Pacific Contract Law and as a Basis for an Estoppel' (2004) 20(1) *Journal of Contract Law* 35; Miranda Forsyth, 'Beyond Case Law: *Kastom* and Courts in Vanuatu' (2004) 35 *Victoria University of Wellington Law Review* 427; Jennifer Corrin Care and Jean G Zorn, 'Legislating for the Application of Customary Law in Solomon Islands' (2005) 34 *Common Law World Review* 144.

¹⁶² Solomon Islands Attorney General's Chambers, 'Solomon Islands Legislation Index, Acts and Subsidiary Legislation, Revised up to 8 November 2017'

<<http://www.pacii.org/sb/indices/legis/legislation-index-08112017.pdf>>; Vanuatu State Law Office, 'Laws of the Republic of Vanuatu — Alphabetical Table of Revised Acts at 16 March 2017. Gaz No 21

be kept up to date,¹⁶³ or may be incomplete. For example, the Solomon Islands index notes:

[w]here commencement or gazettal information is marked as 'unknown' or 'TBC', the relevant legal notice or Gazette has not been located, and may not exist. Therefore, if commencement or gazettal information is marked as 'unknown' or 'TBC', it is possible that the relevant Act has not commenced or has not been gazetted ...

Lists of subsidiary legislation are not complete and will be progressively updated.¹⁶⁴

Other secondary material may be difficult to find. In examining the issue back in 1975, the Committee on Legal Education noted that many university law schools in developing countries

lack a well developed indigenous body of legal literature ... lack institutional resources and encouragement for empirical research; do not produce much faculty research, particularly research which critically examines the social context, policy assumptions, actual administration and behavioural impact of laws.¹⁶⁵

This situation has continued to some degree in the South Pacific. Amongst academics at least, constant staff turnover, heavy teaching loads, minimal administrative assistance and shortage of resources make it difficult for even the most dedicated

of 2017 [Consolidated Index]' <<http://www.paclii.org/vu/indices/legis/legislationindex16032017.xlsx>>. In March 2017 a study participant working at State Law in Vanuatu told me of his delight when he discovered that another office within the Attorney General's department had such an index. He was even more delighted when they agreed to circulate the list amongst all offices within the department (but not all government offices). Evidently this has since been made available publicly.

¹⁶³ Solomon Islands Legislation Index, above n 162, was for example updated in 2017, and had not previously been updated since 2012.

¹⁶⁴ Solomon Islands Attorney General's Chambers, above n 162. Note also Vanuatu State Law Office, above n 162: '** This Symbol indicates that an Act has been Assented to but has not come into force. In any event, you should always check that an Act comes into force before giving legal advise [sic] on it. You should check with the Paralegal Officer of the drafting section of the State Law Office.'

¹⁶⁵ Committee on Legal Education in the Developing Countries, *Legal Education in a Changing World* (International Legal Center and Scandinavian Institute of African Studies, 1975) 19–20. See also Barton G P (George Paterson), *Legal Resource Needs in Small States: Report on Some Pacific Jurisdictions* (Commonwealth Secretariat, London, 1980), reprinted in (1999) 30 *Victoria University of Wellington Law Review* 599.

researchers to publish regularly. Legal practitioners in South Pacific jurisdictions rarely publish, there are no local practice or bar journals, and there may be limited opportunity to disseminate local knowledge gleaned from experience or practice. The small number of academics and practitioners obviously compounds the problem. Relevant presentations are sometimes made at meetings such as South Pacific Lawyers' Association, Australasian Law Teachers Association, or LAWASIA conferences, but papers may not be available beyond the particular presentation. Other materials may be inaccessible, out of date, or as a result of the difficulties of research here, simply wrong.¹⁶⁶

This does not suggest that there are no secondary legal resources available. Articles relating to the South Pacific appear in the *Journal of South Pacific Law*, other local journals, and may also be found in overseas or international journals. Specialist journals relating, for example, to specific categories of law, pluralism, customary law and other areas may also carry relevant work. Much of this will be useful to researchers and policy makers, although possibly less so to the day-to-day work of many legal professionals. Indices of secondary materials exist, and are updated from

¹⁶⁶ See, eg, Pauline Mogish, 'Rights and Procedures of Admission in South Pacific Countries' (Paper presented at the South Pacific Lawyers' Association Conference, 2013), subsequently published in (2013) 2013 *Journal of South Pacific Law* CP-3.

<https://www.usp.ac.fj/fileadmin/random_images/home_middle_banners/emalus/JSPL/2013/Mogish_and_Lambu.pdf>. In this paper the information re admission in Vanuatu was based on *Legal Profession Act 2005* (Vanuatu), which has never come into force: 'Legal Profession Act 2005, ASSENT: 30 December 2005, COMMENCEMENT: Not yet commenced': *Vanuatu — Legislation — Table of Acts by Year — 1999–2005*, Pacific Islands Legal Information Institute <http://www.pacii.org/cgi-bin/sinodisp/vu/indices/legis/Acts_by_Year4.html?stem=&synonyms=&query=legal%20profession%20act#ACTS_2005>. Despite this, the Act was amended in 2010, adding further confusion as to its status: *Statute Law Miscellaneous Provisions Act 2010* (Vanuatu) s 49.

time to time, but researchers may find the actual resources referred to inaccessible if disseminated through commercial publishers.¹⁶⁷

Text books and monographs on law in the South Pacific are rarer. In the 1990s, USP itself published a number of legal titles, written mainly by its own academics and organised for the courses they taught. Cavendish Publishing, following on from its West Indies series of legal textbooks, took over publication from USP with the introduction of its Pacific Law Series.¹⁶⁸ The preface to the first of the series, *Introduction to South Pacific Law*, stated '... the development of [certificate, undergraduate and postgraduate] programmes and the growth of the School of Law has accentuated the need for an introductory text to South Pacific law'.¹⁶⁹ By the second edition, the preface read: '[t]here is still a shortage of text books on South Pacific law. However, apart from those which have been published in-house there now exists a strong foundation of works in a number of areas of law ...'.¹⁷⁰ By the third edition in 2011, now published by Palgrave Macmillan, the preface stated that the number of monographs on South Pacific law 'is still relatively small'.¹⁷¹ Most of the

¹⁶⁷ See, eg, 'Pacific Law Journal Index' provided by the USP library which indexes law journal articles on topics relevant to the Pacific Islands region: *Pacific Law Journal Index* (as of 16 February 2015) The University of the South Pacific <www.usp.ac.fj/index.php?id=16432>; Peter Murgatroyd, *Introduction to Researching South Pacific Law* (updated to July/August 2014) Globalex, Hauser Global Law School Program <www.nyulawglobal.org/globalex/South_Pacific_Law1.html>; *Pacific Legal Gateway*, Pacific Islands Legal Information Institute <www.paclii.org/gateway/>, which provides links to Pacific Islands regional resources and legal research tools.

¹⁶⁸ Topics include Introduction to South Pacific Law, Commercial Law, Property Law, Civil Procedure, Contract Law, and Company Law.

¹⁶⁹ Jennifer Corrin Care, Tess Newton Cain and Don Paterson, *Introduction to South Pacific Law* (Cavendish Publishing, 1999).

¹⁷⁰ Jennifer Corrin and Don Paterson, *Introduction to South Pacific Law* (Routledge-Cavendish, 2nd ed, 2007).

¹⁷¹ Jennifer Corrin and Don Paterson, *Introduction to South Pacific Law* (Palgrave Macmillan, 3rd ed, 2011). By comparison, a quick search of one Australian legal publisher's website shows nearly 10 general Australian property law texts, and over 100 when specialist areas of property such as leasing, resources or investments are included. The same one publisher lists seven general Australian contracts texts, and again many specialist titles in the same area. While the population of Australia is much larger than that of the Pacific Islands, Australia's legal system is also far more settled, far more uniform, and far more

local texts have been connected to specific areas of law taught at USP, and cover all USP countries rather than individual jurisdictions. Covering the law of so many jurisdictions makes it difficult to focus on any jurisdiction in depth, nor on practical or empirical content. Nonetheless, these texts are extremely important and their use is not confined to a student audience; they are often the only existing secondary source related to an area of local practice. Unfortunately, small print runs will always be the norm in the South Pacific, and the lack of IT resources limits the potential for wider dissemination by moving to less costly electronic delivery.

The importance of secondary materials has been well recognised in other jurisdictions: 'text books and journal articles play an invaluable part in allowing the courts to do their job',¹⁷² and 'academics should be writing for courts, lawyers, and law reform and law making bodies; the latter are hungry for good research which can help them fix problems'.¹⁷³ These are comments from Australia, where research material abounds. Better-resourced common law countries constantly produce and use huge quantities of secondary legal material: bulletins, digests, citators, headnotes, catchwords, reports, journal articles, text books and monographs, and even law firm websites, newsletters and blogs. Almost none of these exist in the South Pacific, or for South Pacific law.¹⁷⁴

like that of the United Kingdom, which itself has many, many law publications available on many, many areas of law. The South Pacific on the other hand has ostensibly a dozen different legal systems, which have, between and within them, great diversity in law, yet with perhaps only a dozen texts to cover the field. Note there is now a fourth edition of Jennifer Corrin and Don Paterson, *Introduction to South Pacific Law* (Intersentia, 4th ed, 2017).

¹⁷² Retired Federal Court Justice Ronald Sackville addressing a plenary session of Australasian Law Teachers Association (ALTA) conference, Canberra, October 2013.

¹⁷³ George Williams addressing a plenary session of Australasian Law Teachers Association (ALTA) conference, Canberra, October 2013.

¹⁷⁴ Staff at USP often continue institutional affiliations to their former workplaces to allow them to access those institutions' databases and other online research resources.

Pacific Islands Legal Information Institute (PacLII)

Lawyers in Solomon Islands and Vanuatu, if and when they have internet access, do have the benefit of PacLII. In the late 1990s, teachers at the USP School of Law began a project using technology to collate and distribute Pacific Islands' legal materials. With the help of AustLII (Australasian Legal Information Institute), this became PacLII in 2001. It aimed to serve the legal information needs of teachers and students, and help to overcome 'the tyrannies of distance'.¹⁷⁵ It has since become the place to find primary and some secondary materials from 20 Pacific Island countries, and it now 'services the legal information needs of governments, legal professionals, NGOs, students, academics and members of the public'.¹⁷⁶

While access to legal information has improved dramatically since the advent of PacLII, its provision of material is still a long way from that in better-resourced jurisdictions. PacLII is situated within the USP School of Law, but, as it has been dependent on donor funding, it is never assured of long-term continuation.¹⁷⁷ The need to repeatedly pitch for funding — funding which has previously been channelled through USP rather than provided directly to PacLII — has caused uncertainty, made it difficult for PacLII to

¹⁷⁵ *PacLII – Who and What Are We?* (25 February 2016) Pacific Islands Legal Information Institute <<http://www.pacii.org/pacii/>>.

¹⁷⁶ *Ibid.*

¹⁷⁷ PacLII reports that '[i]n June 2016 PacLII's last funding agreement with the Australian Government expired. The Australian Government is continuing to support PacLII and is providing transitional funding covering the period 1 July 2016 – 30 June 2018. Additional sources of funding are currently being negotiated.': *Funding for PacLII* (20 May 2017) Pacific Islands Legal Information Institute <<http://www.pacii.org/pacii/sponsors/>>. The Vanuatu government has promised at least some funding: Alisi Vucago, 'Vanuatu keeps PacLII online', *Fiji Times* (online), 12 September 2017 <<http://www.fijitimes.com/story.aspx?id=416135>>.

undertake long-term planning, and caused personal and political tension.¹⁷⁸ Australian funding for PacLII is now being withdrawn, and new donors are being sought.¹⁷⁹

Such internal problems are compounded by external difficulties. For example, many Pacific Island countries provide their materials in hard copy only, some do not provide information at all, or have been willing to provide information only upon payment.¹⁸⁰ Some judges resist publication of their own or their colleagues' court decisions. With limited resources, PacLII staff have needed to travel throughout the region to create relationships with information holders and to try to ensure regular updates of material. Even when material exists and is promised, receipt may be hampered by poor physical and/or technological communications, language barriers, staff turnover, the cost of providing the resources, or competing priorities on the part of information providers.

In other instances, materials will simply not be available. Some jurisdictions may have no central collation processes, and courts and legislatures may not have orderly record-keeping procedures. In numerous instances, hard copy material has been destroyed by, for example, fire, flood, insects or other accidents. Electronic materials are sometimes not backed up and are lost or corrupted. Inadequate information

¹⁷⁸ Personal conversations with PacLII staff and USP staff, including Lenore Hamilton, Director of PacLII, between 2010 and 2016, and borne out by my own observations.

¹⁷⁹ 'Many of you know that there were changes to PacLII's funding on 30 June 2016 and that PacLII has been in transition ... In addition to the considerable support PacLII receives from USP: Australia committed AUD250,000 per year over a 2 year period from 1 July 2016 – 30 June 2018 to allow for the transition. The Vanuatu Government committed to VUV22.5 million to assist with the transition. In August 2017 VUV5 million was received from the Ministry of Education pursuant to this commitment. Papua New Guinea has committed to annual funding of PGK600,000 (500,000 from the judiciary and 100,000 from the Attorney General). Commitments from other regional governments are also being sought, and PacLII is also exploring a variety of funded projects.' : PacLII, *PacLII Funding Update* (6 November 2017) Facebook <<https://www.facebook.com/paclii/>>. See also *Funding for PacLII*, above n 177.

¹⁸⁰ Information in this and the following paragraph is based on numerous discussions between the author and Lenore Hamilton, Director of PacLII, between 2010 and 2016, and presentations by Hamilton to Pacific Islands Legal Systems students at USP in January and February 2013 and 2015.

technology, poor computing skills and support, frequent power outages and connectivity problems, slow processing, and tight download limits create further havoc for building up an orderly, up-to-date repository of legal information.¹⁸¹

It may be imagined that the problems with information gathering would be the domain of PacLII, but the difficulties which PacLII experiences are passed on to users in a number of ways. For example, non-receipt of information leaves gaps, while sporadic receipt of information, or receipt of incomplete information, makes it difficult for users to know whether or not material they are accessing is correct, complete and up to date. Where material is supplied to PacLII in hard copy, it may be kept unpublished awaiting conversion, or it may be uploaded in non-searchable format. Again, users may not know whether particular legal resources do not exist, exist but are not available, or are even available but not searchable. Statutes and other legislative instruments may be available, but without complete or up-to-date information concerning commencement, amendment or repeal, and the issue of gazettes themselves may be behind.

Additionally, as mentioned above, internet access throughout the South Pacific is unreliable, slow, expensive and generally unsatisfactory. Another important constraint is that use of information technology is a long way from second nature for most people in Solomon Islands and Vanuatu.

i) External Involvement in the Local Legal Environment

It was discussed in previous chapters that many of the foundations of South Pacific law, legal systems, legal professions and legal education were broadly colonial, and to

¹⁸¹ Ibid.

a great degree their development mirrored that occurring in newly independent states elsewhere. It is also apparent, especially in study participants' frequent references to the overseas assistance which aids their learning and development, that external influences on the local legal environment are not merely historical. Rather, external bodies continue to have a significant impact upon the contemporary local legal environment. The ongoing provision of funding, personnel, ideas and activities affect legal education and the legal sectors of Solomon Islands and Vanuatu, and must be seen as part of the local legal context. This section explains some of these foreign-funded programs and activities.

i) New Zealand and Australian Aid

Many overseas countries and organisations pour huge amounts of money into the South Pacific, with Australia and New Zealand being the largest aid donors.¹⁸² In 2016/2017 to 2017/2018, Australia's total Official Development Assistance (ODA) to Solomon Islands was estimated to be over \$140 million per year,¹⁸³ while total Australian ODA to Vanuatu was estimated at almost \$70 million dollars per year.¹⁸⁴ New Zealand's indicative allocations for 2015/2016 to 2017/2018 were \$55 million for

¹⁸² Australia provided over 65% of the Official Development Assistance (ODA) received by Solomon Islands in 2016/2017, and over 50% of the ODA received by Vanuatu in the same period: *Development Assistance in Solomon Islands: Overview of Australia's Aid Program to Solomon Islands*, Australian Government Department of Foreign Affairs and Trade <<http://dfat.gov.au/geo/solomon-islands/development-assistance/Pages/development-assistance-in-solomon-islands.aspx>>; *Development Assistance in Vanuatu: Overview of Australia's Aid Program to Vanuatu*, Australian Government Department of Foreign Affairs and Trade <<http://dfat.gov.au/geo/vanuatu/development-assistance/pages/development-assistance-in-vanuatu.aspx>>. 2014/2015 figures show New Zealand to be the second largest source of ODA to both countries, but no more recent comparative data is available. *Aid at a Glance Charts. Interactive Summary Charts by Aid (ODA) Recipients* (2017) OECD <https://public.tableau.com/views/OECDDataAidataglancebyrecipient_new/Recipients?:embed=y&:display_count=yes&:showTabs=y&:toolbar=no?&:showVizHome=no>.

¹⁸³ Australian Government Department of Foreign Affairs and Trade, *Solomon Islands Aid Fact Sheet* (October 2017) <<http://dfat.gov.au/about-us/publications/Documents/aid-fact-sheet-solomon-islands.pdf>>.

¹⁸⁴ *Development Assistance in Vanuatu*, above n 182; *Development Assistance in Solomon Islands*, above n 182.

Solomon Islands and \$50 million for Vanuatu.¹⁸⁵ Both Australian and New Zealand aid programs include a focus on increasing security and stability in Solomon Islands and Vanuatu, and see law and justice as crucial to enabling this. While donor aid in these jurisdictions is widely spread, the following discussion is concerned only with foreign aid as it relates to the law and justice sector and legal education.

New Zealand's aid strategy includes as a focus area strengthening law and justice systems in the Pacific, including through strengthening policing, corrections and border management; preventing violence against women; strengthening democratic and national integrity systems; and improving access to justice by strengthening court systems and legal representation.¹⁸⁶ In Solomon Islands, New Zealand aid is focusing on 'improving community safety by strengthening the capability of the Solomon Islands Police, and public confidence in the police'.¹⁸⁷

In Vanuatu, New Zealand funds law and justice support through assistance to the judiciary, corrections department and civil society. For the judiciary, it provides judges from New Zealand, intended to improve efficiency in the court system, provide technical expertise, and help with development of case management processes.¹⁸⁸ It provides funding and technical advice to the Department of Corrections, as well as helping to fund renovation and building of correctional facilities. It has also created partnerships with numerous civil society bodies, recognising the importance of their

¹⁸⁵ New Zealand Ministry of Foreign Affairs and Trade, *New Zealand Aid Programme Strategic Plan 2015–19* (2015) 9 <<https://www.mfat.govt.nz/assets/Aid-Prog-docs/ASEAN/New-Zealand-Aid-Programme-Strategic-Plan-2015-19.pdf>>.

¹⁸⁶ Ibid 12.

¹⁸⁷ *Aid Partnership with Solomon Islands*, New Zealand Ministry of Foreign Affairs and Trade <<https://www.mfat.govt.nz/en/aid-and-development/our-work-in-the-pacific/solomon-islands/>>.

¹⁸⁸ *Aid Partnership with Vanuatu*, New Zealand Ministry of Foreign Affairs and Trade <<https://www.mfat.govt.nz/en/aid-and-development/our-work-in-the-pacific/vanuatu/>>.

input in policy formulation and decision-making.¹⁸⁹ In addition, New Zealand contributes jointly with Australia to a number of programs which are discussed below.

The Regional Assistance Mission to the Solomon Islands (RAMSI) and the Vanuatu Legal Sector Strengthening Project (VLSSP) are two examples of Australian funding being used in attempts to strengthen governance and legal systems in the South Pacific. While RAMSI was in fact a regional mission commenced in response to a period of instability and violence in Solomon Islands, it is discussed here along with Australian aid as Australia led the mission, was its largest contributor, and has also taken over the law and justice aspects of the program since the wind-down of the initial phase of RAMSI.¹⁹⁰

The objectives of the law and justice arms of RAMSI and VLSSP were not dissimilar. RAMSI in the Solomon Islands had many parts, including a Justice Component focused on the structures, processes and systems needed to enable the various elements of the justice system to operate fairly, efficiently and effectively. This part of RAMSI has been replaced by the Solomon Islands Justice Program 2013–2017.¹⁹¹ The VLSSP had the purpose of supporting 'a stable and responsive government in Vanuatu by building sustainable administrative and legal capacity'.¹⁹² This was replaced by the Vanuatu Law

¹⁸⁹ Ibid.

¹⁹⁰ RAMSI, Regional Assistance Mission to Solomon Islands <<http://www.ramsi.org/about-ramsi/>>. See also Jenny Hayward-Jones, 'The High Price of RAMSI: Australia's Lessons from the Solomon Islands', *The Interpreter* (online), 8 May 2014 <<https://www.lowyinstitute.org/the-interpreter/high-price-ramsi-australias-lessons-solomon-islands>>.

¹⁹¹ AusAid, 'Delivery Strategy, Solomon Islands Justice Program (SIJP) July 2013 to June 2017', above n 86.

¹⁹² *Vanuatu Legal Sector Strengthening Program* (13 January 2015) NSW Department of Justice <<http://www.justice.nsw.gov.au/legal-services-coordination/Pages/projects/vanuatu-program.aspx>>.

and Justice Program 2012–2016,¹⁹³ and the Vanuatu–Australia Policing and Justice Program from 2017.¹⁹⁴

These programs in both Solomon Islands and Vanuatu aim to strengthen the law and justice sectors as part of strengthening these societies, and the region, more broadly. To do this, they have focused on building institutional capacity within, and more recently across, the sector rather than simply improving individual capabilities. However, in both Solomon Islands and Vanuatu, the legal sector strengthening programs include considerable elements of capacity building aimed at development of lawyers themselves, and this is where they interact most closely with the topic of this thesis.

ii) Aid for University Legal Education

At the level of primary legal education there is little direct donor support for the study of law. New Zealand offers educational scholarships for students from both Solomon Islands and Vanuatu to attend university, but does not include law studies as a priority area for students from either country.¹⁹⁵ Australia offers scholarships for students from Vanuatu to study Policing and Justice, and for Solomon Islands students to study Legal Services.¹⁹⁶ Students from Solomon Islands and Vanuatu sometimes attend the University of Papua New Guinea (UPNG) or a university outside the South Pacific, but

¹⁹³ AusAID, *Stretem Rod Blong Jastis*, above n 53.

¹⁹⁴ Australian Government Department of Foreign Affairs and Trade, *Stretem Rod blong Jastis mo Sefti*, above n 21.

¹⁹⁵ *New Zealand Scholarships*, New Zealand Ministry of Foreign Affairs and Trade <<https://www.mfat.govt.nz/en/aid-and-development/scholarships/>>.

¹⁹⁶ *Australia Awards: Participating Countries*, Australian Government Department of Foreign Affairs and Trade <<http://dfat.gov.au/people-to-people/australia-awards/Pages/participating-countries.aspx#pacific>>. An employee of the Australian High Commission in Vanuatu told me in that when awarding scholarships she encourages local students to attend Australian or New Zealand universities rather than USP or UPNG, to 'broaden their horizons.' Personal conversation between author and staff member of Australian High Commission to Vanuatu, Port Vila, March 2017.

most law students on scholarships from either their own governments, or from Australia or New Zealand, attend USP.¹⁹⁷ Scholarships funded by foreign aid are generally preferred by students, as those supported by local governments may be stymied by the late arrival of scholarship awards or the late payment of allowances. For some students, locally funded scholarships have meant commencing studies in second semester without studying the prerequisite first semester courses; for others, it has meant being stranded overseas without funds.¹⁹⁸

While Australian aid contributes to USP generally, it does not contribute directly to the School of Law.¹⁹⁹ There is, however, Australian aid funding to peripheral areas of undergraduate legal education. For example, Australian aid contributed to funding the new moot court building, which also houses USP's Community Legal Centre (now Community Law Information Centre). Along with aid from New Zealand, Australian aid has jointly contributed to funding PacLII through a memorandum of understanding with USP. Australian aid also funded the coordinator of the recently introduced program which places USP law students within government legal offices. Each of these

¹⁹⁷ Except for occasional anomalies. For example, I was told by a Solomon Islands government official that for one year (possibly 2013) Papua New Guinea's aid to Solomon Islands included scholarships to UPNG for law students, so that year all commencing Solomon Islands law students went to UPNG instead of USP.

¹⁹⁸ For example, Vanuatu students have been left without funds in Fiji: Anita Roberts, 'Vanuatu Students in Fiji Still Waiting for Allowance', *Vanuatu Daily Post* (Port Vila), 13 August 2015 <http://dailypost.vu/news/vanuatu-students-in-fiji-still-waiting-for-allowance/article_504f6db5-dfa2-5fa6-afd2-1445918c71e0.html>; Anita Roberts, 'Students in Fiji Still Waiting for Allowances', *Vanuatu Daily Post* (Port Vila), 20 October 2015 <http://dailypost.vu/news/student-in-fiji-still-waiting-for-allowances/article_dfe05725-22a2-5b75-b9fe-d4d926558ba6.html>; Solomon Islands Prime Minister's Press Secretariat Office, *Law Students Meet PM, Thanks DCCG for Timely Allowance Release* (24 August 2015) Facebook <<https://www.facebook.com/pmopressecoffice/>>.

¹⁹⁹ See *Partnership Arrangement between Commonwealth of Australia and the University of the South Pacific 2014–2018* (2014) Australian Government Department of Foreign Affairs and Trade <<http://dfat.gov.au/international-relations/regional-architecture/pacific-islands/Pages/partnership-arrangement-between-commonwealth-of-australia-and-the-university-of-the-south-pacific-2014-2018.aspx>>.

— the Community Legal Centre, the moot court, PacLII and the placement program — were recognised by local study participants as important to their legal development.

iii) Advisers/Technical Assistants

Aid donors, and especially Australia and New Zealand, provide technical assistance to the governments of Solomon Islands and Vanuatu to assist with the development of the law and justice sectors. In Solomon Islands in the later years of RAMSI there were over 35 long-term Advisers in the law and justice sector supporting Solomon Islands to build up its judicial, legal and correctional systems and capacity, through the transfer of legal knowledge skills as well as core public service skills.²⁰⁰ In moving from an intervention phase to a development phase, these numbers have decreased under the Solomon Islands Justice Program 2013–2017.²⁰¹ The program now aims at a progressive reduction of Advisers to increase Solomon Islands' independence and ownership of the sector, while not leaving gaps which may result in a loss of the gains made during the RAMSI period.²⁰²

In Vanuatu, Advisers are coordinated by a team leader, and placed within specific legal sector agencies.²⁰³ The Vanuatu Law and Justice Partnership 2012–2016 provided for four Advisers — one each in the offices of Public Prosecutor, State (Police) Prosecutor and Public Solicitor, and another for targeted support where required,²⁰⁴ such as in the recently established Law Commission. While the program gave increased emphasis to

²⁰⁰ Including those working in courts (13) and correctional areas (10), Office of Director of Public Prosecutions (DPP) (4), Office of the Public Solicitor (PSO) (5), Police Prosecutions Office (PPO) (1), Ministry for Justice and Legal Affairs (9), Attorney General's Chambers (2), and case support unit (9). AusAID, 'Delivery Strategy, Solomon Islands Justice Program (SIJP) July 2013 to June 2017', above n 86, Annex B: RAMSI Law and Justice Personnel Inputs — A Snapshot (Feb 2012) 39.

²⁰¹ AusAID, 'Delivery Strategy, Solomon Islands Justice Program (SIJP) July 2013 to June 2017', above n 86, v–vi.

²⁰² Ibid 13.

²⁰³ AusAID, *Stretem Rod Blong Jastis*, above n 53, 15.

²⁰⁴ Ibid 30–2.

capacity building and mentoring of Ni-Vanuatu staff rather than in-line work,²⁰⁵ Advisers sometimes swapped between the two roles where others in the office were inexperienced, or where there was no local lawyer available.²⁰⁶ Mainly, Advisers supported local staff to undertake their responsibilities, and focussed on 'sustainable benefits and promotion of Vanuatu's capacity development'.²⁰⁷ Under the 2017-2020 program, (the Vanuatu–Australia Policing and Justice Program), the team of international advisers remains largely unchanged.²⁰⁸ It has become apparent however that the challenges facing the sector require a broader approach. As a result, the latest iteration of the program includes a greater emphasis on the interface between 'state policing, justice and community services sector and the non-state justice system (for example, churches and chiefly structures)', and on 'what happens at the community level, including the impact on and experiences of end-users of both the state and non-state systems'.²⁰⁹

iv) Placements and Short Courses

Numerous smaller programs provide ongoing education and support for lawyers from Solomon Islands, Vanuatu and across the Pacific. The Pacific Islands Law Officers' Network (PILON) runs annual litigation skills workshops, largely supported by Australia and New Zealand.²¹⁰ Various NGOs provide training sessions in particular areas of law. For example, the International Labour Organisation (ILO) offers occasional workshops

²⁰⁵ 'In-line' work is the substantive legal work of the agency.

²⁰⁶ AusAID, *Stretem Rod Blong Jastis*, above n 53, 16.

²⁰⁷ *Ibid* 41.

²⁰⁸ Australian Government Department of Foreign Affairs and Trade, *Stretem Rod blong Jastis mo Sefti*, above n 21, 53.

²⁰⁹ *Ibid*, 17.

²¹⁰ Kerryn Kwan, 'Pacific Islands Law Officers' Network 2014' (2014) 12 *New Zealand Yearbook of International Law* 139 <<http://www.austlii.edu.au/nz/journals/NZYbkIntLaw/2014/9.pdf>>.

on labour law, and the Regional Rights Resources Team (RRRT) offers training in human rights. In addition to Advisers, donors provide annual funding for local lawyers to attend the Victorian Bar Readers' Course, and placements in NSW government legal offices. Donors also fund occasional courses run locally, which may be targeted, for example, to particular agencies and to less-experienced lawyers.²¹¹ Twinning arrangements between local and overseas government offices also allow staff to spend time in one another's offices, and the South Pacific Lawyers' Association offers a biennial conference.²¹²

As can be seen from the above, external bodies and actors provide considerable support for the legal sector and legal education in Solomon Islands and Vanuatu, and the shortage of local resources makes this particularly important. While some aid supports primary legal education through scholarships or via USP, more commonly programs are targeted at the development of those already in the workplace. Regardless of where the support is targeted, it is clear that foreign involvement in local legal environments remains significant.

j) Part C Conclusion

This section has helped to broaden the picture of the contemporary legal environment within which lawyers in Solomon Islands and Vanuatu learn and work. This picture shows lawyers, and the legal sector as a whole, facing many challenges specific to the local context, including a lack of leadership, shortage of trained lawyers, lack of

²¹¹ See Australian Government Department of Foreign Affairs and Trade, *Stretem Rod blong Jastis mo Sefti*, above n 21, 42; AusAID, *Stretem Rod Blong Jastis*, above n 53, 15.

²¹² It is not clear whether SPLA is still running. The Law Council of Australia, which had been providing Secretariat services to SPLA, states that 'regrettably, in recent times, the executive of that organisation [SPLA] has become somewhat less active.' Email to author from Jonathan Smithers, Chief Executive Officer, Law Council of Australia, September 2017.

expertise in required areas, and professional inexperience. Very junior lawyers are often expected to perform the work of senior lawyers with little training or guidance. Heavy workloads result from unfilled vacancies, absenteeism and shortage of human and other resources, which may lead to demoralised staff and high turnover. Cultural, economic and political influences compete with professional responsibilities, and neither professional bodies nor governments themselves have the expertise or the resources to relieve the burdens identified above. Managerial, organisational, administrative and technological support and resources are in short supply, and legal research materials are both scarce and difficult to access. Foreign aid and external bodies continue to play a significant role in the legal sectors of both Solomon Islands and Vanuatu, and are anticipated to continue to do so for some time.

5. Part D: Pulling the Picture Together

This chapter has shown that law and the practice of law are extremely complex in Solomon Islands and Vanuatu. Both jurisdictions have features in common with other South Pacific states, and more generally with other developing states, newly independent states and small states. However, in the Melanesian states of Solomon Islands and Vanuatu, these features are overlaid by the histories, traditions and cultures of each state and the many communities within them, along with their specific colonial and post-independence experiences. Hence, rather than viewing these states as representative of a larger category and focusing on their commonalities, this research has used an intrinsic case study to allow a fuller focus on matters specific to Solomon Islands and Vanuatu. In this way I have been able to uncover and explore features of these two states which help understand the work of local lawyers and the environment in which this takes place.

As explained in Chapter One, the initial motivations for this research stemmed from my concerns regarding widespread criticism of local lawyers, mismatches between teachers' knowledge and students' experiences, and attempts to determine the necessary local learning outcomes without sufficient understanding of the environments in which graduates would work. The results of my research have given some insight into issues raised by these concerns, as they relate to Solomon Islands and Vanuatu.

A number of findings, discussed below, help to explain the basis of some of the criticisms of local lawyers, and identify a number of areas of competence where further development is needed. They show that there are special features of the legal environment in Solomon Islands and Vanuatu which make knowledge of common law, alone, an insufficient basis from which to teach local students. This bears out the need for educators to have a deeper understanding of local contexts if they are to provide a legal education well aligned to local needs, and thus suited to prepare local law graduates for their home jurisdictions. However, the case study also suggests that the learning outcomes identified overseas, and introduced locally, could — if properly contextualised — provide a suitable framework within which to develop local lawyers' competence. The following section discusses the findings more broadly.

a) The Local Environment

It is apparent from this research that much of the complexity of law in Solomon Islands and Vanuatu results from the continuing mix of local and introduced elements. Statehood itself, local constitutions, and systems of government, common law and legal education, have been superimposed upon what were, and to some degree still are, independent, long-established, Indigenous methods of governance and law, which

are an integral part of, and not differentiated from, the totality of the way of life.²¹³

State law, which is newer, and despite almost 40 years of independence, not widespread nor well entrenched, grapples to establish and retain its place within these societies. My research shows that, in order for state law to secure and stabilise its hold, both jurisdictions require lawyers who can help in the development of the state legal system and the state itself, provide legal expertise in particular areas of need, and provide legal services to both the state and the larger population, through private firms and through state-sponsored services. It is apparent from my research that there are too few local lawyers, and too little legal experience and expertise, to do this presently.

This research has also demonstrated that state law, and lawyers, operate within the broader context of these societies, and subject to the same constraints. Solomon Islands and Vanuatu have predominantly traditional economies, far-flung and remote populations, little infrastructure, poor information and telecommunications systems, and low levels of formal education and of literacy, all of which impact upon the operation of state law and the work of local lawyers.

b) Local Lawyers

This research has shown that local lawyers are inevitably part of both the state system and the local community, and required, always, to straddle the two. Their cultures and backgrounds, and their ongoing everyday lives, are part of an environment very different from, and in many respects contrary to, the expectations of the legal profession within which they work. They are required to meet the demands of the state legal system, but without being freed from the demands of their own

²¹³ Narokobi, above n 36, 25.

communities. In fact, the part they play in state law may even increase their community's demands upon them. The conflict between the culture of *wantokism* and the demands of legal professional ethics is an obvious and easily recognised dilemma, well-illustrated in the findings above.

There are also many other areas, perhaps less obvious, in which embracing state law will require local lawyers to move away from ingrained culture, prior experience and the norms of their 'non-lawyer' lives. For example, the shift toward law issuing from the distant state rather than from the local community, and the elevation of abstract over concrete thinking, rationality over spirituality, individualism over communalism, impartiality over connectedness, and adversarial over conciliatory approaches, may all require significant adjustments in thinking patterns and communication styles for local lawyers.

More concrete requirements of state law may also be beyond, and far different from, local lawyers' experiences. This research has revealed, for example, the difficulty local lawyers may have with order, timeliness, formality, documentation, precision and so forth, all of which state law requires of the legal profession, but none of which are the norm in these communities more broadly.²¹⁴ It is also apparent from the interviews that local lawyers would like to increase their competence in many respects, and frequently seek out, or create, opportunities to do so. Nonetheless, the case study

²¹⁴ Joseph Waleanisia, 'Time' in Hugh Laracy (ed), *Ples Blong lumi: Solomon Islands, the Past Four Thousand Years* (USP Institute of Pacific Studies, 1989) 47, 55:

[T]he traditional kind of behaviour is often criticised as indicating an inability to organize one's time effectively. This is often far from the truth. People generally 'prioritise' each demand on their life. That is, 'time' is allocated on the basis of what-is-more-important should come first. Hence ... an appointment may be broken in order to visit a sick friend, or time might be taken off during official work hours to attend to the needs of relatives. Such acts stem from regard for traditional social obligations. People still value these as much as they might value their work and may be prepared to forfeit 'work-time' to meet their obligations to relatives and *wantoks*.'

shows that supervision, instruction, guidance and feedback to assist with this may be difficult to access.

Many additional features of the local legal environment were shown to create hardships in the workplace, making it difficult for local lawyers to maintain morale and provide professional services. These include lack of support from local professional bodies, discipline rarely (if ever) being enforced, and shortage of administrative, technological, financial and research resources. Already high demands on lawyers may be exacerbated by unfilled vacancies, absenteeism, high staff turnover, inexperience, lack of effective leadership or management structures, and a need to work across a broad range of areas rather than specialising. There may be expectations on new graduates to be able to perform as lawyers immediately, responsible for managing their workloads independently, and for their own direction and further learning. The case study shows that there may be few formal opportunities for ongoing education, but that local lawyers often look for practical and experiential opportunities to learn, including through observation and imitation, trial and error, asking questions and seeking feedback. These methods of learning may be stymied by a shortage of professional role models.

This research has also helped to identify and give context to the competencies needed by local lawyers. At an abstract level these appeared to mirror the generic learning outcomes identified previously, both for the USP law degree, and for overseas law degrees. However, those more generic learning outcomes have been fleshed out by the contributions of study participants, and the additional sources of data, to give them meaning relevant to the local context. For example, lawyers in Solomon Islands and Vanuatu need knowledge of local laws and legal systems that is well

contextualised to their own jurisdictions, taking account of pluralism, and of historical, social, cultural, political and economic contexts. They need oral and written communication skills in English language, plus the ability to speak and understand local Indigenous and/or contact languages, and to use culturally appropriate communication styles. They need the confidence to use these skills in diverse situations, from the highest level of Appeals Courts to advising the most uneducated and illiterate clients. Lawyers need an understanding of ethical principles relevant to a common law legal profession, and both the commitment and ability to apply those in environments replete with challenges, temptations and conflicts, environmental and personal, overt and subtle. The study interviews showed a clear need for better self-management and organisational skills, without which it will be difficult to perform professionally.

Lawyers need to be able to frame, research and solve legal problems, and reach sound judgements using legal analysis and the application of common law principles. At the same time, they must remain attuned to potential *kastom* and cultural implications, and possible conflicts between 'thinking like a lawyer' and Melanesian world views. They need creative and innovative research skills to find primary and secondary legal resources as well as broader policy-related materials, from local and overseas jurisdictions. Local lawyers need to be sensitive to the potential for changing, improving and developing law and legal systems, and need the skills to assist in implementing change. They need to be able to perform all these skills/functions within the environment outlined above.

c) Outside Influences

The influence of outsiders, and particularly of colonial powers, was brought out in the background chapters preceding the empirical work. In addition to the system of

government, and statehood itself, nearly every aspect of state law shows outsiders' fingerprints. The legal systems, the organisation of the legal professions and the setup of legal education were all shown to be driven to a large extent by forms, ideas or activities initiated or introduced from elsewhere. An important point from the findings above is the extent to which outsiders and outside influences remain significant even today.

In terms of money, external funding helps to support USP,²¹⁵ PacLII, student scholarships, and law and justice sector programs, including in policing, corrections and the judiciary. Where external funding does not provide direct support, it often supports other bodies such as PILON and SPLA which, from time to time, provide programs, workshops, conferences and so forth to local legal sectors. Foreign personnel are ubiquitous in capacity-building and academic roles, and in some, although increasingly fewer, judicial appointments. The study interviews demonstrated the extensive role that foreign personnel and externally funded programs have in the development of local lawyers. Both local and foreign participants noted the significance of this, and also that this partially fills what would otherwise be a much larger gap in the opportunities available for local lawyers to advance their learning.

In terms of representation, foreigners have had, and still have, a great deal of influence in what outsiders know of both Solomon Islands and Vanuatu. As the written sources referred to in this and previous chapters demonstrate, foreigners have authored the larger part of the accessible literature and documentation regarding local environments. Materials relating to the history of these two jurisdictions, and even to

²¹⁵ *Partnership Arrangement Between Commonwealth of Australia and the University of the South Pacific 2014–2018*, above n 199.

local *kastom* and culture, have been written largely by foreigners, as have works relating to their legal development, commentary on their laws, and documentation about the workings of their legal sectors. As a result, without this case study drawing together the views of local participants, this thesis would be based largely on outsiders' views on all of these topics. This is not to suggest that outsiders' views are wrong, only that they come from perspectives and worldviews often quite removed from those of local people, and potentially at odds with the development of an independent post-colonial legal order.

Foreigners' expectations of the local environment and of local lawyers' competence may be coloured by their experiences in other jurisdictions. For example, local legal offices may appear chaotic when judged against lawyers' offices in New Zealand, or local lawyers' writing might appear poor when judged against the writing of Australian lawyers. In addition, those foreigners who have worked in other Pacific countries, or who teach across multiple jurisdictions, may also compare the competencies of local students and graduates to those from Pacific states with higher levels of secondary education, fewer local languages, and lesser, or different, environmental challenges and cultural demands. Again, this is not to suggest these views are wrong, only that different factors may be at play in the judgments and remarks of foreign observers.

On this basis, it is important not to expect or require the contributions of local participants to be confirmed, or triangulated, by written documents or foreign views. Nonetheless, there was nothing in the literature, or in the views of foreign participants, which jarred with the data collected from local participants. The picture drawn by local participants of lawyers' work, the legal profession and the surrounding environment was not dissimilar to that illustrated by foreign participants and written

documents. While foreigners expressed their criticisms of local lawyers' competence more starkly, local lawyers also identified the need for considerably improved competencies in many of the same areas, along with a keenness to achieve these. Further, foreign participants often referred to the greater challenges faced by local lawyers than faced by, for example, Australian lawyers, suggesting a sensitivity to the different environments, and an ability to temper their expectations of local lawyers in view of the surrounding environment.

One matter which causes concern is comments from foreigners and from some local participants to the effect that foreign-funded programs offer the only opportunities for continued learning. Other local participants had commonly mentioned learning through informal means. It may be that some local participants were discounting informal learning in their responses, or that they viewed even informal learning as requiring observation of, or feedback from, Advisers and other foreigners. Either way, it is concerning if the learning which might otherwise come from more senior local lawyers is being ignored or disparaged in favour of foreign guidance. Donors will need to ensure that the provision of aid does not increase dependency on outsiders, or sideline the contributions which local lawyers might make to the learning of others.

6. Conclusion

The work in this chapter has provided an intrinsic case study of the local legal environment, which includes the views, perspectives and experiences of both local and foreign lawyers in Solomon Islands and Vanuatu, and draws on further relevant data from documentary and other sources. While this could have been written up in many different forms, I have tried to keep the contributions of local participants clearly differentiated from those of other participants and documentary sources. While a

researcher invariably influences both the data itself and its presentation, I hope that this research will be accepted as a genuine attempt to ensure that relevant local voices are heard by legal educators, while also illuminating the legal environment more broadly.

In addition, the interview responses have been organised to tie in with educational theory and practice, by setting out information regarding the work of local lawyers, what they perceive to be the knowledge, skills and attitudes they need to do that work, and by placing those within the local context. Hopefully, this structuring will help to inform ongoing debates about local legal education and the needs of local lawyers, and allow legal educators at all levels — undergraduate studies, practical legal education, workplace supervision and continuing legal education — to draw from this work to inform their own practice.

It will be apparent from the case study that numerous mismatches and contradictions arise between the requirements and expectations of state law, and the traditions, experiences and everyday lives of local people. At the broadest level, this raises questions as to whether the systems of law currently in place are themselves appropriate to these jurisdictions, and whether there are alternative systems or developments which might be better suited. These questions are, however, best left to local people, and to researchers working within a transformative paradigm. I hope nonetheless that the material provided by the case study will help shine light on these issues for those wishing to pursue such questions.

For the remainder of this thesis I assume the existence of current legal systems and local legal environments, as portrayed in the intrinsic case study above. The following

chapter draws potential implications for local legal education from this case study, and explores possibilities for addressing those.

CHAPTER SEVEN: IMPLICATIONS AND SUGGESTIONS

1. Introduction

Chapter Six presented a case study of the legal environments of Solomon Islands and Vanuatu. This research is an important first step in providing detailed information about the legal environment in which local lawyers operate, as well as ensuring that the information presented includes local perspectives and gives space to local voices. Placing the views of study participants within the broader local context — both historic and contemporary — helps us gain a deeper understanding of their experiences, and a better appreciation of their educational needs. As well as the picture the case study itself provides, it is hoped that the conduct and dissemination of this work will acknowledge and demonstrate the importance and value of local participation, and encourage local people to undertake, or at least to be actively involved in, future research on topics of importance to them.

The research presented in previous chapters should also help to inform legal educators at all levels — undergraduate degree, practical legal training, workplace supervision and continuing education — of the context within which local lawyers learn and work. An understanding of this context will assist educators to determine the learning needs of local law students and graduates, and offer direction for designing educational offerings suited to the local context. In recognition of this potential, I now turn to more instrumental concerns. While it appears from the case study that there is much to be done in terms of practical legal training, workplace supervision and continuing legal education, as well as in strengthening legal institutions such as professional bodies and courts, I leave those concerns to others. This chapter looks at the case study's

implications for undergraduate legal education, and makes suggestions for possible action.

In line with the methodological issues raised in Chapter Two, implications drawn and suggestions offered should be understood with the following caveats in mind. The interpretation of the data presented, and the suggestions made below, are those of an outsider; a Western academic now based in Australia. However, having worked in the local environment for two years, undertaken this research over a period of six years, visited Solomon Islands and Vanuatu frequently, and kept in regular contact with study participants and other local lawyers, I hope this work can offer a useful perspective on the issues arising. Readers are asked to view this as an attempt to offer initial ideas on which others might build, and not as a claim to have ‘the answers.’

It is also important to keep in mind the following:

- The case study relates to only two jurisdictions, while South Pacific legal education presently covers 12. Some of the observations and suggestions below will be relevant across the region, and some relevant only to the jurisdictions studied. The need for further research to determine which is which is discussed later in this chapter.
- A considerable proportion of undergraduate legal education in the South Pacific occurs in ‘distance’ or ‘online’ mode. While the implications and suggestions below will be equally important for those studying at a distance, this mode of

education exacerbates the issues arising in face-to-face education,¹ and may introduce additional concerns which are beyond the scope of this thesis.

- The local environment is complex and dynamic, and will have changed since the empirical work was completed, and will continue to change. Hence, there may now be details which are incorrect, or recent changes may have made some suggestions redundant. My focus is, however, the larger picture, understanding that the issues arising remain relevant, even where details may have changed.
- There are many challenges facing educators in the local environment which constrain their ability to act. While I make various suggestions, I also appreciate that the difficulties of implementing them will be significant.
- While this thesis is about local legal education and not about the University of the South Pacific (USP), I have referred to the USP situation where relevant in the hope of making the work more useful in the existing circumstances.

Some of the implications for local legal education which arise from the case study have been noted previously, as have a number of the suggestions made below. Where relevant, I reiterate prior suggestions if supported by the research above, both to inform those currently working in the area, and to demonstrate the long-term nature of many concerns. It is important also to note that, at times, these suggestions have been acted upon, sometimes successfully, but in the local environment there is a tendency, particularly due to lack of resources and constantly shifting personnel, for activities or programs to fall away over time.² Consequently, it is important that in

¹ Helen Menard, 'The Online Experience — The Students' Perspective' (2004) 26(2) *Directions: Journal of Educational Studies* 27; A Ricketts, 'Online Education in the South Pacific' (Paper presented at the Asia Pacific Initiative Conference, United Nations University, Tokyo, Japan, March 2008).

² For example, the Community Legal Centre has become the Community Law Information Centre, and no longer offers a complete 'live' clinic experience.

implementing any change, consideration is given not only to how it could be introduced, but also to how it might be made sustainable.

Further, it is difficult to implement change when resources are scarce. Attempts to overcome one problem may mean shifting resources from elsewhere, potentially creating or exacerbating other difficulties. However, criticism of local lawyers,³ agitation by USP member states for better prepared law graduates,⁴ and an evidence base regarding the very real needs of local law graduates (at least in two jurisdictions) may provide some insight into, and give some urgency to, the funding needs of the USP School of Law. Similar research in other USP member states would assist this. In addition, USP's focus on improving its international ranking,⁵ at least part of which relies on reputation, may help persuade it to give higher priority to resourcing potential improvements. Even so, given the shortage of funds in the local environment generally, it is important also to try to harness a broader range of resources, such as already existing knowledge, expertise, networks and alternative sources of funds.

2. The Purposes of Local Legal Education

Before looking at specific implications of the case study, it is worth reviewing briefly the general aims of a common-law university legal education. Although common lawyers were initially trained through apprenticeships or reading with senior lawyers,⁶ the move to university law studies separated the practical aspects of their training from the academic aspects, to present law as far as possible as 'scientific and

³ Discussed in Chapter One.

⁴ The University of the South Pacific, 'Review Panel Report for the School of Law, Faculty of Arts, Law and Education' (August 2012) 62 (held by author).

⁵ The University of the South Pacific, *Strategic Plan 2013–2018* (2013) 5 <<https://www.usp.ac.fj/strategicplan2013-2018>>.

⁶ Linda Martin, 'From Apprenticeship to Law School: A Social History of Legal Education in Nineteenth Century New South Wales' (1986) 9 *University of New South Wales Law Journal* 111.

systematic.’⁷ Law schools went to great lengths to distinguish themselves from ‘trade schools’, to prove that law was a discipline worthy of university study.⁸

In the years that followed, the purposes of legal education were much debated, with the value of a theoretical or liberal degree often pitted against that of a practical or vocational degree. In fact, the debate has continued into the 21st century:

[D]o law schools exist to train lawyers, or to offer a liberal legal education? To characterise the debate in its starkest terms, on the one hand are ranged those who think law schools are primarily about producing future lawyers, whose view of the curriculum is that it should reflect the needs of the legal professions with time devoted to traditional doctrinal analysis of law and that law schools should ensure that students learn the skills ... that are clearly relevant to practice. On the other hand, there are those that are clear that the function of a university law school, if it is to truly fulfil its role as part of the academy, is to offer a liberal education in law.⁹

At the time the law degree was introduced to USP in 1994, the dominant pattern of common-law legal education was an undergraduate degree focused on academic or theoretical learning of law, with subsequent practical courses and workplace supervision reserved for those who wished to practise as lawyers.¹⁰ This provided the model for South Pacific legal education, although, as discussed in Chapter Four, the South Pacific law degree was envisaged not as providing a liberal education in law, but as a first step in preparing lawyers to perform the legal services needed in local

⁷ Andrew Boon and Julian Webb, ‘Legal Education and Training in England and Wales: Back to the Future?’ (2008) 58(1) *Journal of Legal Education* 79, 86, quoting Sir Frederick Pollock, as quoted in Neil Duxbury, *Judges and Jurists* (Oxford, 2001) 70.

⁸ Martin, above n 6. In relation to American legal education: ‘The first formal law schools, most notably Harvard, were eager to distance themselves from the stigma of the trade school, so epitomized by industrial-age economist Thorstein Veblen’s memorable barb, “the law school belongs in the modern university no more than a school of fencing or dancing.”’ Tonya Kowalski, ‘True North: Navigating for the Transfer of Learning in Legal Education’ (2010) 34(1) *Seattle University Law Review* 51, 78.

⁹ Julian Webb et al, *Stakeholders in the Law School* (Bloomsbury, 2010) 2.

¹⁰ See Chapters Four and Five.

jurisdictions. While each of the stages of learning had something different to offer, USP was urged to view the distinction as separating the stages of learning from one another, rather than as separating the *content* of one from another. From very early in USP's provision of undergraduate and practical training programs, it was proposed

- that legal education be seen as an ongoing process, from undergraduate study, through vocational courses to continuing legal education;
- that all stages of legal education reflect the need for an awareness of the practise of law and the skills and competencies implicit in this;
- that undergraduate education for the region include a substantial element of legal skills and case working experience.¹¹

As well as questions relating to academic or vocational focus, for the South Pacific there were additional issues of whether legal education should focus on teaching for multiple individual jurisdictions or emphasise a more regional approach, and whether it should focus on state law or deal also with traditional or *kastom* systems. There were suggestions that it should do everything: 'both degree and vocational courses should address common law traditions, regional concerns, jurisdictional differences and custom.'¹² This would be an ambitious undertaking for any law school.

a) The Challenge of Meeting Multiple Demands

Not all areas of focus have had the same level of attention. While *kastom* has had some place in the curriculum, the overall emphasis of USP's law degree has been on state law. As well as the historical reasons outlined in Chapters Three to Five, there are also practical reasons for this emphasis. The common foundations and features of

¹¹ R Grimes, 'Legal Education in the South Pacific — Producing Tomorrow's Lawyers' (Discussion paper, USP Pacific Law Department, 1995) 1.

¹² Ibid.

state law across the region are easier to cater for than teaching the diverse non-state systems. As discussed previously, the diversity of *kastom* across individual states, and across the region, is significant. Further, *kastom* had always been passed down by local communities in local jurisdictions. University legal education was introduced to take over from the education formerly provided in other Commonwealth countries such as England, Australia and New Zealand.¹³ It was envisaged as necessary to prepare local people to engage with the state legal systems following Independence, rather than with local traditional systems.

Regarding regional/national lawyers, it was hoped that the undergraduate degree would create lawyers 'thoroughly conversant with, and indeed specialists in, the legal systems of their own countries'.¹⁴ It was acknowledged at the same time that there would be a temptation to focus on commonalities rather than specifics, and to adopt common ground wherever possible.¹⁵ It was also accepted that it would be unrealistic to expect that practical training could include specifics for every state, and so the 'finer detail of the law relevant to the individual jurisdiction will be a matter for each student to identify'.¹⁶

Given that circumstances necessitated a more generalised approach, it was recommended that each jurisdiction examine their own aspiring lawyers' 'comprehension and competence in the context of their own domestic laws' to ensure the more regional focus of the law programs was sufficiently complemented with local

¹³ A H Angelo and J Goldring, 'The Study of Law at the University of the South Pacific' (1994) 24 *Victoria University of Wellington Law Review* 103.

¹⁴ C Guy Powles, 'Learning Whose Law? Legal Education in Pacific Societies. Choices for the Pacific Island Region' in Commission on Folk Law and Legal Pluralism, *Papers presented to the Congress at Victoria University of Wellington*, August 1992 (Law Faculty, Victoria University of Wellington, 1992) 256, 263.

¹⁵ Ibid 262.

¹⁶ Grimes, 'Legal Education in the South Pacific', above n 11, 11.

knowledge.¹⁷ It was suggested that those admitted on the basis of overseas qualifications and experience would also be required to ‘establish their knowledge and understanding of the laws and procedures of the country in question’.¹⁸

This assessment of local competence by individual jurisdictions did not occur, and it appears that USP’s member states instead expected the undergraduate and practical training programs to prepare students for each local jurisdiction. As a result, USP’s generalised ‘focus on the region and comparative legal study rather than national systems’ has raised concerns over a long period.¹⁹ The most recent review of the USP School of Law noted that the School needed to ‘be responsive to the concerns of members of the legal profession in each of these jurisdictions, [which] are currently being vigorously expressed’.²⁰ Part of the School’s response has been the recent establishment of jurisdiction-specific Professional Diploma in Legal Practice (PDLP) programs.²¹

In regard to these various pulls — academic/vocational, regional/national and state law/*kastom* — the law degree has not been static. The degree content has not been wholly pre-determined by its history or original circumstances. At times the degree has had more practical focus, more jurisdiction-specific content and/or more *kastom*, and

¹⁷ Ibid.

¹⁸ Richard Grimes, ‘Culture, Custom and the Clinic — A Model for Legal Education in the South Pacific’ (1998) 24(1) *Monash University Law Review* 38, 41; Grimes, ‘Legal Education in the South Pacific’, above n 11, 17.

¹⁹ Jennifer Corrin Care and Susan Farran, ‘Law in the Pacific: Implications of Jurisdictional, Cultural and Ethnic Diversity for the Teaching of Law’ (1997) 31(3) *The Law Teacher* 283, 308.

²⁰ The University of the South Pacific, ‘Review Panel Report’, above n 4, 6. Note that the report did not detail what those concerns were.

²¹ Re Samoa, see The University of the South Pacific, *PDLP Goes Online for Samoa* (20 December 2014) Facebook <<https://www.facebook.com/USP.Team/photos/a.10150480840797393.363318.76066037392/10152534082512393/?type=1&theater>>. Information re PDLP for Vanuatu and Solomon Islands draws on conversations with USP staff in Vanuatu March 2017 and Solomon Islands April 2017.

at other times less. For example, customary land tenure was at one stage included in the core Property II course, before being removed from that into an elective course. Practical, clinical aspects were previously included in some core foundational courses such as Torts and Contracts.²² Further, the focus is not uniform across courses or teachers, where attention to each area may vary considerably. Overall, rather than choosing between dichotomous positions, aspects of local legal education have shifted amongst them, often depending on the time, the course or the teacher.

Unsurprisingly, the School of Law itself has stated that it ‘aims to provide quality education in law ... that meets the needs of the twelve member countries of the USP, and in particular to produce graduates that are well equipped to enter the legal professions of those countries’.²³ Ideally, detail would be added to that broad statement through member states articulating and communicating what they need from legal education. The Law School has been urged to seek such input,²⁴ and potential methods for encouraging that input are discussed later in this chapter.

b) Future Directions

In the meantime, the findings of the case study I have conducted suggest some starting points, in relation to two jurisdictions at least. Firstly, in terms of the academic/vocational issue, the case study has shown that:

- Local graduates need to be prepared to use their legal training in practice, and not merely in an intellectual, theoretical or academic way. This is not to suggest

²² Re customary land tenure, information is from study participant; re clinical features in core courses, see Grimes, ‘Culture, Custom and the Clinic’, above n 18, 45.

²³ The University of the South Pacific, ‘Review Panel Report’, above n 4, 21.

²⁴ Ibid. Recommendation 56: ‘that the Head of School reestablish the SOL Programme Advisory Committee, including representation from the legal communities of the region, with regular meetings held by video link.’

that all graduates will work in roles dubbed elsewhere as practising solicitors or barristers, but rather that all will be called upon to use their legal training. The case study has shown that both Solomon Islands and Vanuatu have significant need of further legal expertise, due to the still developing nature of local states and legal systems, and the scarcity of people with legal training. Further, governments and aid donors who support students to undertake law studies expect to see a practical return, with graduates able to contribute to state and legal development, and provide the legal services necessary to that jurisdiction.²⁵

- Local graduates need to develop legal and transferable skills and appropriate personal and professional attitudes, along with academic knowledge.
- Knowledge, skills and attitudes all need further development, and could usefully be advanced well beyond what is currently achieved.
- Undergraduate education cannot presently assume that gaps between academic study and professional practice will be filled by practical legal training, workplace supervision or continuing legal education.

Secondly, in terms of the regional/national issue, the case study has demonstrated that:

- at least some elements of the undergraduate curriculum will require jurisdiction-specific focus;
- local lawyers will need to understand law in the light of the broader national context, including historical, political, economic and cultural factors;

²⁵ The need for local jurisdictions to see a 'practical return' was noted as early as 1997: Corrin Care and Farran, above n 19, 308.

- local lawyers will need to have knowledge of, commitment to, and the tools for applying the necessary legal, professional and personal skills and attitudes in the context of their own jurisdictions.

Thirdly, in terms of the state law/*kastom* question, the case study has demonstrated that:

- the knowledge and practise of state law cannot be separated from the environment which surrounds it;
- lawyers in Solomon Islands and Vanuatu need an understanding of *kastom* as a source of state law, an alternative to state law, a potential tool in the development of state law, and part of the broader environment within which state law functions;
- local lawyers need an understanding of the practical interplay between state law and *kastom* as it affects the practise of state law.

Each raises difficulty for local legal education. It is difficult to emphasise specific jurisdictions when there are 12 to be covered. Teachers may be unaware of local matters, and the difficulties are compounded when there are few written resources from which to glean a contextual understanding. Those resources which do exist tend to be written by outsiders, and may cover ‘the law’ without taking account of how the law plays out in the local context. The case study has demonstrated the importance of going beyond ‘the law’ in preparing law graduates for local environments. These concerns will be returned to later in this chapter.

3. The Need for Work-Readiness

In addition to needing practical or vocational elements in the curriculum generally, local law graduates will need to be as ‘work-ready’ as possible upon graduation. The case study has shown that upon entering the workplace new lawyers may be expected to undertake substantive legal work immediately, and to perform in senior positions despite their inexperience, often with little guidance or supervision in the workplace to help them do so. Demands may be made of graduates due to taking on a particular role or position, or simply because they have legal training.²⁶ The case study bears out the need for legal education to help prepare local graduates for practice.²⁷

a) Linking Knowledge, Skills and Attitudes

While some further preparation will follow completion of the law degree, both the case study and educational theory suggest that knowledge, skills and attitudes are better developed synchronously than separately.²⁸ Although legal education had previously shied away from non-academic content, more recently the idea of law studies comprising simultaneous ‘apprenticeships’ in the cognitive, practical and ethical domains has taken root, as demonstrated by moves toward educating for

²⁶ Similar observations have been made previously. See, eg, R B Cartledge, ‘Thrown in at the Deep End’ (2011) Issue 3 (October–December) South Pacific Lawyers Association *newSPLash* 6 <https://docs.wixstatic.com/ugd/0217f9_8b9ed8f97907487ab0535c89320a7286.pdf>; Jennifer Corrin Care, ‘Finding the Right Balance in Plural Legal Systems: Training Lawyers in the South Pacific’ (2006) 4(2) *Journal of Commonwealth Law and Legal Education* 171; Edward Hill, ‘The USP Community Legal Centre: Combining Legal Education and Legal Services in a Developing Island Country (Working Paper)’ (2004) 8(1) *Journal of South Pacific Law* <<https://www.usp.ac.fj/index.php?id=13270>>; Grimes, ‘Culture, Custom and the Clinic’, above n 18.

²⁷ The panel reviewing the Law school had also noted that in ‘informal meetings with stakeholders, a good deal of dissatisfaction was expressed with the readiness of recent LLB graduates from USP to take their place in the legal profession.’ The University of the South Pacific, ‘Review Panel Report’, above n 4, 62.

²⁸ William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Jossey Bass, 2007); Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association, 2007).

broader learning outcomes.²⁹ This could help develop the work-readiness clearly needed by graduates from Solomon Islands and Vanuatu, and would be beneficial for all students, even those from jurisdictions which may have less demand for work-readiness.

b) Attention to Local Needs

USP's School of Law has been urged to review its Bachelor of Laws (LLB) curriculum 'in consultation with the legal communities of the various USP member countries', after first 'identify[ing] the requirements for admission into legal practice' in those jurisdictions.³⁰ Formal admission requirements are part of the picture in preparing graduates for local practice. However, producing 'graduates that are well equipped to enter the legal professions of those countries'³¹ will require far broader considerations than that, including an understanding of what local legal practice entails, and the characteristics of the local legal profession.

The case study has shown that the legal professions of both Solomon Islands and Vanuatu are broad and amorphous. Unlike in many countries from which USP's academic staff are drawn, the local legal professions are not predominantly private professions working for private clients. Rather, legal work is spread across public and private employment, with many lawyers moving between the two, undertaking work

²⁹ Sullivan et al, above n 28; Stuckey et al, above n 28; Sally Kift, Mark Israel and Rachael Field, 'Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching Academic Standards Statement' (Australian Learning and Teaching Council, 2010); Anna Huggins, 'Incremental and Inevitable: Contextualising the Threshold Learning Outcomes for Law' (2015) 38(1) *UNSW Law Journal* 264.

³⁰ The University of the South Pacific, 'Review Panel Report', above n 4, 45. Recommendation 26: 'The Panel recommends that as a first step in the process of curriculum review the Head of School should identify the requirements for admission into legal practice of the various USP member countries.' Recommendation 27: 'The Panel recommends that the compulsory component of the LLB curriculum should be reviewed in consultation with the legal communities of the various USP member countries, including consideration of any requirements for admission into legal practice that might exist in particular countries.'

³¹ Ibid 21.

which is rarely specialised and which may comprise as much or more governance, development or law reform work as private, commercial or transactional work. The case study showed that, for graduates to be work-ready and well equipped to take their part in the local legal professions, they require legal knowledge, skills and attitudes aligned both to the types of work required and the way it is practised. Further research into these matters will be needed for other South Pacific jurisdictions.

4. Outcomes-Focused Education

a) Importance for USP

The articulation of program or threshold learning outcomes is part of a broader ‘outcomes-based’ or ‘outcomes-focused’ approach to education,³² increasingly being used in legal education elsewhere.³³ Outcomes-based learning moves away from a focus on the transmission of knowledge, and aims instead for the development of a broader range of learning outcomes in graduates. As discussed in earlier chapters, the adoption of this approach, and the consequent articulation of program learning outcomes for the local law degree, helped USP to stay aligned with developments in education internationally. It also addressed the Law School’s own concern that achievement of the Australian threshold learning outcomes may be necessary for the local law degree to gain/maintain equivalence with Australian law degrees.³⁴ Common approaches would signal to students, donors and employers the equivalence of the

³² Karine Tremblay, Diane Lalancette and Deborah Roseveare, *Assessment of Higher Education Learning Outcomes Feasibility Study Report Volume 1 — Design and Implementation* (OECD, 2012) 35-8; Sally Kift, ‘21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law’ (2008) 18(1&2) *Legal Education Review* 1; Stuckey et al, above n 28, 32-6.

³³ Anna Huggins, above n 29; Kift, Israel and Field, above n 29, Appendix 3: National and International Comparison Tables, 29.

³⁴ Email to author from Peter MacFarlane, Head of USP School of Law, October 2010: ‘[T]his is of sufficient importance that we, as a Law School, should start doing our own work on ensuring that our LLB satisfies the knowledge and skills requirements that are outlined in the proposed [Australian] TLOs.’

local degree to overseas degrees, and reduce the likelihood of them giving preference to graduates from, or studies in, Australia or New Zealand.³⁵ Keeping in line with international trends in legal education could also improve the ability of the Law School to use academic staff and teaching resources from overseas.

In addition, comparability across institutions, and accreditation or recognition of USP's degrees, would allow international benchmarking and external assessment of quality and standards. This is particularly important to allow USP to show itself as 'a quality institution producing degrees comparable to those awarded by universities in Australia, New Zealand and the United Kingdom'.³⁶ USP hopes to increase its international ranking, and 'move from being a good university to one that is excellent ... Success will be measured using many instruments, including but not limited to external reviews [and] benchmark comparisons against international accreditation ...'³⁷

b) Preparing People, Not Teaching Subjects

An outcomes-focused approach might be beneficial for the local law degree in more substantive respects also.

³⁵ Note the comment of the Review Panel:

The ostensible reason for mandating completion of [various] compulsory courses in the LLB curriculum at USP appears to stem from the minimum academic requirements that must be met by those seeking admission to practice in Australia. These Australian requirements demand that proficiency be shown in a number of subject areas, known as 'the Priestley eleven'. This appears to explain why the following courses are compulsory in the USP LLB curriculum: Criminal Law and Procedure I and II; Torts I and II; Law of Contract I and II; Property Law I and II; Equity and Trusts; Administrative law; Constitutional law; Evidence; Legal Ethics...

It is unclear why the USP LLB curriculum should be substantially dictated by entry requirements relating to the Australian legal profession given the Panel's understanding that most USP graduates entering the legal profession do so in Pacific Island Countries.

The University of the South Pacific, 'Review Panel Report', above n 4, 45.

³⁶ USP — *An Introduction* (12 February 2013) The University of the South Pacific <http://www.usp.ac.fj/index.php?id=usp_introduction>.

³⁷ The University of South Pacific, 'Review Panel Report', above n 4, 21; see also The University of South Pacific, *Annual Plan 2013* (2012) 5 <<http://www.usp.ac.fj/2013annualplan>>: 'In line with the theme of "good to excellent", the Learning and Teaching priority area will pursue further international accreditation of programmes.'

Firstly, outcomes-focused education shifts the emphasis away from the mere transmission of discipline knowledge, ‘the transfer of information from one skull to another’³⁸, a long-practised method of legal education now increasingly criticised.³⁹

A teacher centred pedagogical model ... a one-way transmission of vast amounts of information, will simply not produce the complex new learning outcomes (integrated knowledge, skills and attitudes) our students now require. It is what the student does ... with the various resources and inputs they are given — how they construct their own understandings and new knowledge, ways of doing and professional identity — that is critical.⁴⁰

The need for discipline knowledge remains unchanged, but an outcomes-focused approach emphasises the need for that knowledge to be integrated with the broader skills and attitudes necessary to put it into practice. The importance of this was demonstrated in the case study.

Secondly, outcomes-focused approaches shift the attention away from the teacher and toward the learner, emphasising ‘what students ought to know, understand and be able to do when they finish study, rather than being based solely on what we think we should be teaching.’⁴¹ This seems particularly important in the South Pacific context. A prescient Pacific scholar, Konai Helu Thaman, as early as 1982 had criticised the ‘continued overemphasis on teaching subjects rather than the preparation of *people* who can meet the challenges of particular contexts’.⁴² This was echoed by a local study

³⁸ J B Biggs, ‘Teaching for Better Learning’ (1990) 2 *Legal Education Review* 133, 133; see also John Biggs and Catherine Tang, *Teaching for Quality Learning at University: What the Student Does* (McGraw Hill, 4th ed, 2011).

³⁹ Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (2000) <<https://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC89.pdf>>.

⁴⁰ Kift, ‘21st Century Climate for Change’, above n 32, 21.

⁴¹ Mary Heath, ‘Assessment Strategies’ in Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis Butterworths, 2011) 269, 274.

⁴² Konai Helu Thaman, ‘Looking Towards the Source: A Consideration of (Cultural) Context in Teacher Education’ (1982) 14(2) *Directions: Journal of Educational Studies* 3, 10 (emphasis in original), referred to

participant: *At the end of the day it is people you're training. They're people with obligations. They're connected.*

In addition, because law teachers are drawn from various South Pacific and wider-spread jurisdictions, may have little local knowledge and may come and go in a brief period, focusing on the transmission of their knowledge may leave the curriculum inconsistent or even erratic, not sufficiently covering issues of local relevance, and with little emphasis on preparation of graduates for work in the local context.⁴³ On the other hand, a curriculum clearly and deliberately focused on student learning, and on what graduates *here* need to know and be able to do, would necessarily shift attention to local students, local content and local context, and by doing so better fulfil the aims of a local law degree. For example, coverage of ethical rules may provide necessary discipline knowledge, and may be sufficient in some contexts. In local jurisdictions, however, ethical practice will require skills and attitudes different from and greater than mere knowledge of rules, or the skills and attitudes needed elsewhere. Both theory and practice in legal education are increasingly emphasising the importance of integrating knowledge, skills and attitudes, and of focusing on the learning outcomes achieved by students.⁴⁴ It appears that this emphasis is suited to local legal education also.

in Cliff Benson, *(Pacific) Cognitive/Learning Styles and the Curriculum: Do We Know Enough About our Learners?* (USP, no date) (held by author).

⁴³ For example, legal ethics was taught in consecutive years by two different Australian teachers and one New Zealander. Current Developments in the South Pacific was taught at one stage by a Canadian, online, from Canada. Legal drafting was taught by teachers from Australia, Canada, Fiji and Samoa over the space of five years. In some cases, additional teachers taught the online sections of the same courses.

⁴⁴ Anna Huggins, above n 29; Stuckey et al, above n 28; Sullivan et al, above n 28.

c) A Whole-of-Curriculum Approach

The introduction of outcomes-focused education would ideally involve a whole-of-curriculum approach.⁴⁵ Firstly, necessary and desired learning outcomes would be identified and given content, to allow articulation of ‘what students should be able to do, and what they should know, once they have completed the law degree’.⁴⁶ In the local situation, identifying necessary outcomes and content might be assisted by the results of the case study, by better communications with local states and professional bodies, and by further research in all jurisdictions. Secondly, the curriculum would be designed to ensure development of the chosen outcomes by taking students from where they commence their studies, through to the achievement of the required competencies by graduation. This would mean not only identifying the outcomes needed, and the methods of developing and assessing students’ achievement of these,⁴⁷ but would also involve investigating the starting points of students from the various member countries.

Because outcomes-based approaches focus on the development of competence, the outcomes are often not amenable to the fast, discrete achievement associated with the transmission of solely academic knowledge.⁴⁸ Rather, a whole-of-curriculum approach would include mapping the stages at which the various outcomes are to be developed across the curriculum, incrementally building advances upon base levels,

⁴⁵ Richard Johnstone, ‘Whole of Curriculum Design in Law’ in Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis Butterworths, 2011) 1.

⁴⁶ Ibid 10.

⁴⁷ Heath, above n 41. Note, however, that attempts to change curricula often focus on content and assessment, but forget the most important part — ensuring that students are given opportunities, and guidance, to learn and develop the knowledge, skills or attitudes to be assessed.

⁴⁸ Norman Witzleb and Natalie Skead, ‘Mapping and Embedding Graduate Attributes across the Curriculum’ in Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis Butterworths, 2011) 31.

and revisiting and practising the various competencies.⁴⁹ This might include pervasive development of outcomes across all, or many, courses in the curriculum, the addition of standalone courses alongside existing courses, the addition of discrete modules into content-based courses, and final year capstone courses to bring together the learning from disparate parts of the curriculum. It may require a re-think of ‘courses’ altogether. In the local context, with constant pressure on resources and frequently changing teachers, sustainable change is more likely if it becomes an integral part of the program’s core, and is included at multiple points in the curriculum. The latter ensures incremental and ongoing opportunities for students to work toward development of the outcome, but also means their achievement is less likely to be jeopardised by an individual teacher not giving that outcome the emphasis it requires.

While outcomes-focused education and a whole-of-curriculum approach could benefit local students and graduates, and help to instrumentalise the findings of the case study, two points must be borne in mind. Firstly, even in the absence of wholesale curriculum change, it is worth focusing on the development of relevant and contextualised knowledge, and generic and professional competencies and attitudes. There may be smaller-scale and less resource-intensive ways, some of which are discussed further below, to pursue the achievement of these outcomes. Secondly, regardless of the overall ‘approach’ taken, to develop the knowledge, skills and attitudes local graduates need, legal education will require local research resources to inform and contextualise the curriculum, locally oriented teachers to deliver the curriculum, and appropriate pedagogical methods to enable students to achieve the

⁴⁹ Ibid; Johnstone, above n 45. Note also prior School of Law consideration of this: USP School of Law, ‘Integrating Discipline Specific Attributes into Assessment’ (USP School of Law Teaching and Learning Workshop, 2008) (held by author); Anita Jowitt, ‘Report for SOL Board of Studies’ (May 2011) (held by author).

goals of the curriculum. These points will be returned to later in this chapter, but first I turn briefly to what the case study shows regarding program learning outcomes.

5. Program Learning Outcomes

Program learning outcomes (PLOs) for the South Pacific law degree were drafted and adopted in the absence of research into the needs of graduates in local environments, and it was thus unclear whether the PLOs selected would be the most appropriate locally.⁵⁰

a) Retaining Existing PLOs

The case study has demonstrated that the learning outcomes identified by USP's Law School are indeed necessary for local graduates from Solomon Islands and Vanuatu. Local participants reported the need for lawyers to achieve all of these outcomes, as well as frequently expressing a desire to improve their own abilities in each area identified. Many foreign participants, and some local participants, also criticised local graduates' abilities in each of these learning areas. The case study thus suggests both that the identified PLOs are necessary, and that their development needs enhancement.

Discipline or program learning outcomes have generally been drawn at a very broad or abstract level, to allow different emphases in different contexts. The Australian threshold learning outcomes (TLOs) for law, for example, were drafted in such a way that they could be integrated within the curricula of over 40 individual Australian law schools, while still leaving discretion as to how they would be achieved.⁵¹ They were 'not intended to lead to standardisation', and activities for their development were to

⁵⁰ As mentioned previously, I was a member of the group drafting the PLOs.

⁵¹ Kift, Israel and Field, above n 29, 9.

be ‘designed by each law school in the context of their own institution’s learning and teaching mission and goals’.⁵² The level of abstraction was so high that the TLOs used in Australia were easily incorporated into even the South Pacific PLOs.

Because these were introduced to USP as ‘*program* learning outcomes’ they needed to be sufficiently abstract to apply to all graduates completing the program, in this case the LLB degree, regardless of home jurisdiction. At this generic level, the identified PLOs — knowledge, communication skills, professionalism and ethical behaviour, legal research and reasoning skills, and ability to contribute to the development of South Pacific countries’ laws and legal systems — are likely to be required of law graduates in all South Pacific jurisdictions. In addition, the Law School has fleshed out the explanations of the PLOs to add further South Pacific relevance, leading to PLOs which include, at a generic level, the content of the Australian TLOs, as well as reference to some regional content, and occasional reference to ‘the student’s own country’.⁵³ Given this, the PLOs as articulated may sufficiently identify generic program outcomes, although perhaps with some adjustments.

b) Minor Shifts in Emphasis

The ethics and professionalism PLO currently includes a brief reference to graduates’ ability to manage work independently. The case study has shown that this is likely to entail a much higher level of competency than is required in countries such as Australia and New Zealand, due to the vastly different level of resources that mark the workplace infrastructure, and limited access to senior personnel. The importance of competent self-management and basic organisational and administrative skills in the

⁵² Ibid.

⁵³ School of Law & University of South Pacific Policies, LLB Programme Outcomes, Moodle Book (2015) (held by author and provided in Appendix 2).

local legal environment cannot be overstated. It is also evident that these skills need considerable development. Therefore, it may be beneficial to break apart different aspects of this PLO, with self-management and organisational abilities given greater emphasis by creating an additional, discrete learning outcome tailored to South Pacific environments.⁵⁴ Well-developed self-management and organisational skills would provide a stronger foundation upon which to build higher levels of ethics and professionalism, but, without these skills, professionalism in particular may continue to founder. Including self-management and organisational skills as a PLO in its own right would draw attention to the importance of these skills, and encourage their development across the curriculum. It would signal to teachers that these skills cannot be assumed to have been developed prior to university studies, nor should they be expected to develop via osmosis. Even if concerns about self-management are less pressing in jurisdictions other than Solomon Islands and Vanuatu, and the skills themselves better developed, attention to this area would benefit all graduates. It may be that research into other jurisdictions would suggest other modifications to the PLOs.

c) Future Directions

Three further points might be made about PLOs.

Firstly, the case study has shown that some PLOs, or aspects of some PLOs, will be more important, more difficult to develop or require more local emphasis than others.

It was recognised in the drafting of the Australian learning outcomes that the 'six TLOs

⁵⁴ See, eg, Australian TLO 6: Self-management. 'Graduates of the Bachelor of Laws will be able to: (a) learn and work independently, and (b) reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.' Kift, Israel and Field, above n 29, 10.

should not be equally weighted across the degree program'.⁵⁵ For example, it is not intended that the '[k]nowledge outcome constitutes only one-sixth of the program of study'.⁵⁶ In developing the actual outcomes then, more attention will be needed to areas where graduates experience the most difficulty, and where local legal settings demand higher levels of competence or where they provide less support. For example, the case study identified legal communication as both very important and especially difficult for graduates from Solomon Islands and Vanuatu, and therefore needing greater emphasis. The case study also highlighted the need for concentrating on applied ethics rather than theory, due to the likelihood of local graduates being confronted with real-life ethical challenges. It demonstrated the importance of graduates' self-management and organisational and administrative abilities in these jurisdictions, due to the less orderly setting, and the lower chance that local students begin their studies with these habits well developed. Accordingly, the emphasis necessary for each learning outcome will depend on the local context, including not only the context into which law graduates will go, but also the context from which law students are drawn. For other states the various PLOs may require different content or different emphasis.

Secondly, regardless of how generally or specifically the PLOs are drawn, the need for the various learning outcomes to be well integrated with one another was very apparent in the case study. For example, lawyers may be unable to research because they do not know where to start, unable to draft a complaint because they do not know the elements of an offence, or unable to argue because they do not have the requisite thinking and communication skills. While each of the identified learning

⁵⁵ Ibid 9.

⁵⁶ Ibid.

outcomes is clearly needed, they will rarely be used independently of one another, and thus they must be developed and understood as integral parts of a larger whole. The drafters of the Australian TLOs for law made this point very clearly. Graduates should

demonstrate a broad and coherent assimilation of the [learning outcomes] ... For example, a graduate with an understanding of a 'coherent body of knowledge ...' (Knowledge) will frequently apply the results of legal research (Research skills) to demonstrate the thinking skills set out in (Thinking skills) ... will in turn need to be communicated effectively ... (Communication and collaboration), and ethically ... (Ethics and professional responsibility).⁵⁷

It is important then that development of the learning outcomes closely connect with each other, so that graduates both understand and are able to work with the interplay between them.

Thirdly, the need for learning outcomes to be both practical and practised was apparent throughout the case study. Many case study participants, both local and foreign, noted the difficulty that local graduates had in applying their academic/theoretical knowledge in real-world situations, and suggested that the learning outcomes should not only be capable of practical application, but should actually have been practised prior to graduation. All the learning outcomes are described in practical terms — 'graduates will be able to ...' — and outcomes-based education reflects exactly this: education that aims at achievement of competence and capability, and not mere 'knowledge'.⁵⁸ Certifying that students 'are able to' suggests students have practised the task at least to an initial level of competency, and the case study clearly shows the significance of this.

⁵⁷ Ibid.

⁵⁸ Johnstone, above n 45, 7–8.

Of course, identifying PLOs is only one step, developing them another. The promulgation of TLOs/PLOs has generated considerable research and resources on this elsewhere. For example, for every Australian TLO, and sometimes even for particular aspects of a TLO, a 'Good Practice Guide' has been published.⁵⁹ These guides discuss theory and practice related to the outcome, as well as providing extensive references to further work on each topic.⁶⁰ They explore the potential content of the various PLOs, and discuss methods for their development, their integration with the broader curriculum, and their assessment. At a general level, these would all provide useful resources for educators tasked with developing the PLOs in the South Pacific, and would provide ideas and information about what has been done elsewhere. However, this broader work will only be useful in local legal education if it takes account of the local context. On that basis, we now move away from 'outcomes', and re-focus on education in the local context.

6. Drawing on Study Findings and Applying Learning Theory in Practice

We have seen above that an outcomes-based approach could be useful for South Pacific legal education, and that a focus on PLOs may provide an appropriate higher-level framework within which to develop local lawyers' knowledge, skills and attitudes.

⁵⁹ Commissioned by the Council of Australian Law Deans, with support from the Australian Learning and Teaching Council. Links to all Guides are available on the website of the Legal Education Associate Deans at <http://www.lawteachnetwork.org/resources.html>.

⁶⁰ See, eg, *Good Practice Guides (Bachelor of Laws)*, Legal Education Associate Deans Network <http://www.lawteachnetwork.org/resources.html>; Alex Steel, *Law in Broader Contexts* (2013); Judith McNamara, Tina Cockburn and Catherine Campbell, *Reflective Practice* (2013); Michael McShane, *Appropriate Responses to Legal Issues: ADR* (2013); Clare Cappa, *Research Skills* (2012); Nick James, *Thinking Skills (Threshold Learning Outcome 3)* (2011); Maxine Evers, Leanne Houston and Paul Redmond, *Ethics and Professional Responsibility (Threshold Learning Outcome 2)* (2011); Sharon Wesley, *Communication (Threshold Learning Outcome 5)* (2011); Elizabeth Handsley, *Collaboration Skills (Threshold Learning Outcome 5)* (2011); Judith Marychurch, *Self-Management (Threshold Learning Outcome 6)* (2011); Catherine Brown, Judith McNamara and Cheryl Treloar, *Statutory Interpretation* (2011); All published by Australian Learning and Teaching Council, Sydney.

We have seen that the identified PLOs, with some modification, if sufficiently and suitably practical and contextualised, emphasised, integrated and practised, may be appropriate here. The development of these outcomes needs to be underpinned by curriculum and pedagogy suited to the local context.

It appears from the case study that there is real potential for the study of state law to clash with students' prior experiences and everyday lives. This may make it difficult for students from Solomon Islands and Vanuatu to develop and internalise the knowledge, skills and attitudes demanded of their program of study. Research in other South Pacific jurisdictions would show if students from those jurisdictions also encounter the same, or different, clashes. Either way, achieving the learning outcomes required of state law is a complex, long-term undertaking, not susceptible to simple transmission of 'knowledge', and not confined to one stage of learning or another. It is necessary then to look at how this might best be supported in the local environment.

This thesis has assumed that approaches used in legal education elsewhere should not be automatically reproduced in the South Pacific, or in any jurisdiction for that matter, due to the need for close contextualisation of education to the local environment. However, pedagogical approaches based on theories of social constructivism, developed over a number of years by numerous scholars,⁶¹ and broadly accepted in legal education elsewhere,⁶² may have a great deal to offer in the South Pacific setting. In particular, attention to social constructivism may help in aligning local legal education with the needs of law students and graduates. While the case study focused

⁶¹ In particular, Lev Semyonovich Vygotsky — see especially *Mind in Society: The Development of Higher Psychological Processes* (Harvard University Press, 1980); Albert Bandura — see especially 'Behaviour Theory and the Models of Man' (1974) 29 *American Psychologist* 859; and John Dewey — see especially *Experience and Education* (1938, republished by Touchstone New York, 1997).

⁶² Johnstone, above n 45, 4, 25.

on two jurisdictions only, the following should be relevant for students from across the South Pacific, subject again to appropriate contextualisation.

Descriptions of social constructivism vary, but its main tenets include the beliefs that:

- new knowledge is built upon the learner's existing knowledge and experience;
- knowledge is constructed by the learner as new material interacts with the learner's prior experience and the surrounding context;
- social interaction increases learning as understanding is constructed, reconstructed and refined in the light of others' understandings; and
- authentic tasks and situations promote learning, and help learners to construct knowledge capable of retrieval and manipulation in future settings.⁶³

Each of these, and its relevance to local legal education, will be examined in turn.

a) New Knowledge is Built upon Learners' Prior Knowledge and Experience

As mentioned above, outcomes-based learning aims for the development of a broad range of learning outcomes in graduates, rather than focussing only on the transmission of knowledge. However, while the skills that students need to master during their studies are emphasised, and outcomes are assessed and evaluated, where students commence their studies may be overlooked. The need to pay attention to students' backgrounds has been noted generally,⁶⁴ and specifically with reference to

⁶³ This summary of the main ideas of social constructivism is drawn from Pamela Lysaght and Cristina D Lockwood, 'Writing-Across-the-Law-School Curriculum: Theoretical Justifications, Curricular Implications' (2004) 2 *Journal of the Association of Legal Writing Directors* 75, 90–2.

⁶⁴ Sally Kift, 'Articulating a Transition Pedagogy to Scaffold and to Enhance the First Year Student Learning Experience in Australian Higher Education' (Final Report for ALTC Senior Fellowship Program, QUT, 2009).

South Pacific law students.⁶⁵ As a general rule, good curriculum design for the first year 'explicitly acknowledges ... varying student backgrounds, needs, experiences, existing skills, and patterns of and opportunities for engagement',⁶⁶ and provides materials and learning activities to suit.

Because new knowledge is built upon prior knowledge and experience, attention to this can help ensure that student learning is appropriately scaffolded, and that gaps are not left between where students begin, and what they are expected to learn and achieve. While much has been written about scaffolding,⁶⁷ the basic precept is that students benefit from learning activities and materials which allow them to climb the metaphorical learning ladder, rung by rung, from one floor to the next, rather than being expected to leap from floor to ceiling without support. As a result, to provide appropriate scaffolding, it is necessary to know the rung, or even the floor, at which each student begins.

Individual students always begin their studies with diverse prior knowledge and experience, but in the local environment that diversity is likely to be exacerbated as students are drawn from so many disparate educational, linguistic and cultural backgrounds. Local study participants noted, for example, that students educated in Solomon Islands and Vanuatu had less proficiency with English language than did local students schooled in New Zealand, and students from Fiji and Tonga. Participants noted variable levels of secondary education between different local jurisdictions, as

⁶⁵ Corrin Care, above n 26; Aidan Ricketts, 'Threshold Concepts in Legal Education' (2004) 26(2) *Directions: Journal of Educational Studies* 2; Corrin Care and Farran, above n 19.

⁶⁶ Susan Armstrong and Judith McNamara, 'Transition Pedagogy in First and Final Year Law Programs' in Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis Butterworths, 2011) 207, 221.

⁶⁷ For an excellent discussion of the use of scaffolding in teaching law, and its theoretical basis and development including discussion of Lev Vygotsky's work, see Diane May, 'Using Scaffolding to Improve Student Learning in Legal Environment Courses' (2014) 31(2) *Journal of Legal Studies Education* 233.

well as making comparisons between local and overseas education, such as *schooling is better in Australia and New Zealand*.

The need to deal with such student diversity has been discussed particularly in literature relating to the ‘first year experience’. According to this research, recognising and working with the diversity of incoming students is an important organising principle for *any* first-year curriculum:

The first year curriculum should be attuned to student diversity and must be accessible by, and inclusive of, all students. First year curriculum design should recognise that students have special learning needs by reason of their social, cultural and academic transition. Diversity is often a factor that further exacerbates transition difficulties. The first year curriculum should take into account students’ backgrounds, needs, experiences and patterns of study, and few if any assumptions should be made about existing skills and knowledge.⁶⁸

The latter point regarding assumptions is very important in this instance. While local students are drawn from multiple backgrounds, so are teachers, whose own experiences and expectations are likely to be diverse, and may be based on their own personal or teaching experiences in yet other locations. Even teachers from within the Pacific Islands will be teaching students from numerous jurisdictions, and while they are likely to be familiar with the general background of students from one or more local jurisdictions, they may be unfamiliar with others. Teachers from outside the region may not be familiar with any local environments, or the likely background, experience, knowledge or skill levels of any local students.⁶⁹ Some may even be unwilling to take them into account. For example, foreign study participants

⁶⁸ Kift, ‘Articulating a Transition Pedagogy’, above n 64, Appendix 1: First Year Curriculum Principles, 41.

⁶⁹ This was noted also by Corrin Care and Farran, above n 19, especially 286, 293.

mentioned that secondary schools *should* ensure higher levels of competence,⁷⁰ that university admissions standards *should* be raised,⁷¹ and that law teachers *should* be required only to teach law (and not English language).⁷² It is important, however, that teachers do not base their teaching on what they believe *should be*, and focus instead on what *is*, otherwise they may be unable to provide learning activities sufficiently connected to students' actual knowledge and experience, and thus leave gaps in students' learning. Foreign participants compared local and overseas education in specific areas: *some of their language is at [X jurisdiction] year 8 level — possibly understandable, but that's all*; and *Grade 10 in [X jurisdiction] schools teach about to-do lists, organisational and admin skills, but they don't get that here*. Hence, teachers with experience of school education overseas, or even in only one or two local jurisdictions, need to be particularly careful not to assume that secondary education will have been similar for all students.

Teachers from overseas need also to be aware that in the local environment higher education is a rare commodity. With only small numbers of graduates across these jurisdictions, few students will come from families or communities where higher education is the norm.⁷³ They are therefore not likely to be familiar with a university's

⁷⁰ Raising this matter has been noted to have potential political ramifications. If the quality of secondary school English in particular jurisdictions were questioned this could be seen as attacking national governments: Conversation between author and Tony Angelo at Australasian Law Teachers Association (ALTA) conference, ANU, Canberra, October 2013. Nonetheless the panel reviewing the USP Law School recommended 'pre-entry diagnostic testing, and the referral of weaker candidates to remedial and even ESL courses, before they are permitted to undertake legal studies.': The University of the South Pacific, 'Review Panel Report', above n 4, Recommendation 32.

⁷¹ This remains a live issue. However, the review panel recommended 'that the present entry requirements to the LLB degree be retained ...': The University of the South Pacific, 'Review Panel Report', above n 4, Recommendation 32.

⁷² This is not unique to the local setting and has been noted in other environments also. See, eg, Wesley, above n 60.

⁷³ It is difficult to access statistics relating to university attendance and qualifications as most figures for education stop at secondary school level. The Solomon Islands Household Income and Expenditure Survey of 2012/13 estimated that 2.4% of Solomon Islanders had completed a university qualification:

setting, expectations and culture. As a result, acculturation into the university, and to the discipline, may need explicit attention. This has also been recognised in research into the first-year experience, which sees the need to help students transition as another guiding principle:

The curriculum and its delivery should be designed to be consistent and explicit in assisting students' transition from their previous educational experience to the nature of learning in higher education and learning in their discipline as part of their lifelong learning. The first year curriculum should be designed to mediate and support transition as a process that occurs over time. In this way, the first year curriculum will enable successful student transition into first year, through first year, into later years and ultimately out into the world of work, professional practice and career attainment.⁷⁴

To design a curriculum which begins where students are, more knowledge is needed. While English language has been singled out for testing in the past,⁷⁵ it is apparent from the case study that there are additional areas which may also require targeted development as a result of experiences and exposure students have or have not had in different jurisdictions. Research into the educational, cultural and linguistic backgrounds of Pacific Island students, and assessment and observation of incoming students, could provide educators with a better understanding of their students' likely knowledge and experience. Using this as a base, first year could focus on attainment of

Solomon Islands 2012/13 Household Income and Expenditure Survey National Analytical Report (Solomon Islands National Statistics Office, 2015) 100

<<http://www.statistics.gov.sb/statistics/demographic-statistics/household-income-and-expenditure-surveys>>.

The Vanuatu Household Income and Expenditure Survey of 2010 estimated that less than 2000 (of about 240,000) Ni-Vanuatu had any post-secondary qualification — university degrees were not distinguished from others: *Vanuatu Household Income and Expenditure Survey 2010* (Vanuatu National Statistics Office, 2012) 89

<http://www.vnso.gov.vu/images/PublicDocuments/HouseholdIncome_ExpenditureSurvey_HIES/2010/2010%20HIES_REPORT.pdf>.

⁷⁴ Kift, 'Articulating a Transition Pedagogy', above n 64, Appendix 1: First Year Curriculum Principles, 40.

⁷⁵ The University of South Pacific, 'Review Panel Report', above n 4, Recommendation 32.

the minimum standards required as a foundation for later years' study.⁷⁶ USP's law curriculum was modified to this end in 2014, with a requirement to pass first year before moving on. However, further attention to the commencing points of students could help bridge gaps between where students begin and the end points to be achieved before moving into second year.

Additionally, the Law School could influence at least one area of the experiences with which students commence their studies. For example, by requiring prospective students to attend courts, parliaments and other institutions of state law in their own jurisdictions, and to undertake work experience placements prior to and during their law studies, teachers could be assured that students have had at least some level of exposure to their own state's legal environment. This is particularly important for students from jurisdictions where state law is not pervasive, such as Solomon Islands and Vanuatu, and where students may have little or no familiarity with or exposure to it. For all students, it would provide a relevant and real grounding for their studies, such that the abstract ideas they encounter could be integrated with their real experience.

Finally, while examining the knowledge and experience incoming students need but *do not* have, it is essential also to acknowledge what local students *do* bring with them into law school. The case study suggested that the existing competencies of local students and graduates are not always recognised as such, especially by foreign participants who made comments such as *they can't think* or *they can't communicate*. Such comments pathologise the (in)abilities of local students and graduates, devalue

⁷⁶ A similar approach was proposed by Sharon Christensen and Sally Kift, 'Graduate Attributes and Legal Skills: Integration or Disintegration?' (2000) 11(2) *Legal Education Review* 207.

their knowledge, behaviour and worldviews, and fail to acknowledge alternative ways of communicating, thinking and so forth. Approaching learners from a deficit perspective has previously been blamed for limiting the educational achievement of learners in cross-cultural settings.⁷⁷ This mindset assumes lack of achievement is due to shortcomings of the learner or the learner's background, rather than the shortcomings of the educator or setting or curriculum, or even merely a mismatch between them. It is important then that no assumptions are made that local students 'cannot do' what they need to do.⁷⁸ Rather, as discussed above, attention is needed to the backgrounds of students from local jurisdictions, and the point at which they commence their studies, so that a curriculum can be designed to enable progression from there to the achievement of the necessary graduate outcomes.⁷⁹ Recognising existing knowledge and competency is essential if they are to be built upon.

b) Knowledge is Constructed by the Learner

A social constructivist approach to learning suggests that rather than knowledge existing in the abstract, knowledge is constructed by and within the learner, by the stimulus of new material acting upon the learner's prior experience, within the

⁷⁷ See, eg, Roy Nash, 'Educational Inequality: The Special Case of Pacific Students' (2000) 15 *Social Policy Journal of New Zealand* 69, 75: 'No one wants to return to the "deficit" theories of 30 or 40 years ago. Focusing only on practices and ignoring the structural conditions of their production, these theories seemed to "blame the victim" and exonerate the oppressor.' See also Sarah Kozel Silverman, 'Cultural Deficit Perspective' in Sam Goldstein and Jack A Naglieri (eds), *Encyclopedia of Child Behavior and Development* (Springer-Verlag, 2010) 446-447: 'A cultural deficit perspective is comprised of two parts: (a) the attribution of an individual's achievement to cultural factors alone, without regard to individual characteristics; and, (b) the attribution of failure to a cultural group. In other words, a cultural deficit perspective is a view that individuals from some cultural groups lack the ability to achieve just because of their cultural background.'

⁷⁸ Ria Tomoana, *Sharing Successful Teaching and Learning Strategies for Māori, Pacific, and Youth Learners: The Whitireia Way* (Whitireia, Ako Aetearoa Publication, 2012) <<https://ako.aotearoa.ac.nz/ako-hub/ako-aotearoa-central-hub/resources/pages/strategies-maori-pacific-and-youth-learners>>.

⁷⁹ Concerns about entry standards should be distinguished from generalised assumptions of what local students can and cannot do.

surrounding context.⁸⁰ Hence, 'knowledge is not information to be delivered at one end, and encoded, memorized, retrieved, and applied at the other end. Instead, knowledge is experience that is acquired through interaction with the world, people and things.'⁸¹

Where prior and new knowledge are consistent with one another, the latter may be easily assimilated by the learner, but it is less easy to assimilate knowledge which is inconsistent or which clashes with past experience.⁸² The case study has shown that this may be a common challenge for local students. For example, students' prior experience of how communities are regulated is likely to focus on *kastom*, which is an organic, integral part of local life; overseen by a community leader and applied to a specific community; and used to maintain harmony, resolve immediate problems and restore peace within a community. This may contrast starkly with what students are now learning of state law as a standalone discipline, separated from other aspects of life, positivist in nature, enforced by a distant and impersonal state, and bound by precedent and *stare decisis* to ensure certainty, impartiality and equality. Abstract, rational, individualistic and impartial thinking processes required by state law may challenge local connected, communal and concrete ways of thinking. Where state law demands communication which is precise, direct, detached and adversarial, local norms may require more willingness to compromise, subtler and less direct forms of communication, and greater respect for, and deference to, hierarchy and received

⁸⁰ Lysaght and Lockwood, above n 63, 90–1.

⁸¹ Edith Ackermann, *Piaget's Constructivism, Papert's Constructionism: What's the Difference?* (2001) Future of Learning Group MIT Media Laboratory, 3
<[http://learning.media.mit.edu/content/publications/EA.Piaget%20 %20Papert.pdf](http://learning.media.mit.edu/content/publications/EA.Piaget%20%20Papert.pdf)>: Ackermann summarising Piaget.

⁸² Barry J Wadsworth, *Piaget's Theory of Cognitive and Affective Development: Foundations of Constructivism* (Longman, 5th ed, 1996).

wisdom. Students' experience of cultural expectations, specific relationships, and the obligations which attend them, may conflict with the ethical and professional behaviours required by state law. Responsibilities dictated by local culture may even be proscribed for local lawyers, such that community expectations cannot be met.⁸³ While the extent and detail of inconsistency between students' experiences and the law curriculum will vary, it is likely that clashes of one kind or another will arise for students from across the various South Pacific jurisdictions. In these circumstances, the learning of local students requires more than simple assimilation of knowledge, or construction which aligns with prior experience. Rather, students may need to develop new thinking patterns to accommodate and make sense of the material they are confronted with.⁸⁴

According to constructivist learning theory, better learner engagement with the material and the setting encourages deeper learning and enhances the ability to

⁸³ See also Guy Powles, 'Law, Courts and Legal Services in Pacific Societies' in Guy Powles and Mere Pulea (eds), *Pacific Courts and Legal Systems* (USP Institute of Pacific Studies, 1988) 6, 8: In the Pacific

people working in the law and the courts are faced daily with conflicts, inconsistencies and seeming incompatibilities, such as those: between traditional ideas and Christian teaching, as to what is right and wrong, or fair, or just; between group-based and individual-oriented societies as to notions of responsibility; between unwritten customs and written statutes — as to both the way they are expressed and the content of what they say; between the authority of local chiefs, elders and councils, and that of the courts and agencies of central (and regional) governments, often called upon to deal with the same matter; between courts dealing once-and-for-all with the particular act or offence in isolation, and traditional processes which address the wider context of disputes, often without attempting to achieve finality; between customary manners and methods of communicating, and formal court procedures; between local attitudes to statements which are accepted as proof of facts, and strict rules of evidence such as the exclusion of hearsay and the burden and standard of proof; between the different backgrounds and training of personnel, such as adjudicators and lawyers, within the same jurisdiction; and between the function of the court as the arbiter of isolated breaches and disputes and its function as an agent of social or government policy — to mention only some.

⁸⁴ 'Piaget believed that human beings possess mental structures that assimilate external events, and convert them to fit their mental structures. Moreover, mental structures accommodate themselves to new, unusual, and constantly changing aspects of the external environment.' 'This effort to maintain a balance ... allows for cognitive development and effective thought processes.' Kakali Bhattacharya and Seungyeon Han, 'Piaget and Cognitive Development' in Michael Orey (ed), *Emerging Perspectives on Learning, Teaching, and Technology* (Department of Educational Psychology and Instructional Technology, University of Georgia, 2001) <http://epltt.coe.uga.edu/index.php?title=Piaget%27s_Constructivism>; and see Wadsworth, above n 82.

construct meaningful knowledge.⁸⁵ Some methods of engaging local students in the classroom were suggested in Chapter One.⁸⁶ Given the contradictions between students' experiences and the common-law curriculum, it is likely that student engagement could also be improved through a culturally inclusive and responsive curriculum.⁸⁷ This would involve acknowledging and validating students' prior knowledge and experience, and giving recognition and importance to local context more broadly.⁸⁸ Although the state law curriculum is based largely on foreign foundations, it could be made more inclusive by better contextualising 'introduced' content with reference to its place in the local environment. One participant gave an example of this at a very specific level:

We looked at the interaction of contract law and kastom. An expat woman leased a property with a mango tree, and she wanted to make mango chutney, but the villagers had always collected and used the mangoes. We analysed the tension in terms of hierarchy, kastom and contract and lease of land, and written and unwritten law.

At a more general level, covering state law's local history, its impact on local communities, or its practical application in the contemporary setting would bring the material closer to home for students, and would accord with the needs of graduates as reported in the case study. The inclusion of local Indigenous perspectives would also help students to engage with the material covered, although teachers would need to be both careful and creative in finding and presenting Indigenous perspectives, given

⁸⁵ Nick Zepke and Linda Leach, 'Improving Student Engagement: Ten Proposals for Action' 2010 11(3) *Active Learning in Higher Education* 167; Johnstone, above n 45, 4–5.

⁸⁶ See, eg, Arthur Faerua, 'The Teaching and Learning of Legal Writing Skills: Observations from Emalus.' (2004) 26(2) *Directions: Journal of Educational Studies* 41; Sue Farran, 'Playing Games in the Classroom' (2003) 12(1&2) *Pacific Curriculum Network* 21.

⁸⁷ Tomoana, above n 78.

⁸⁸ Sandy Thompson et al, *Training Manual for Teaching Working with Pacific Islanders* (Aotearoa National Centre for Tertiary Teaching Excellence, 2009) 4.

that most law texts and resources have been written by foreigners.⁸⁹ Overall, cultural inclusivity would help students engage with the material presented, connect prior and new learning, and construct knowledge which builds upon and integrates, rather than clashes with, former experience.⁹⁰ More local and more contextualised material would also provide relevant and useful content for the 'knowledge' learning outcome, as demonstrated by the case study.

All other learning outcomes would similarly benefit from closer connection to local context. For example, a curriculum which acknowledges and builds upon local thinking styles, while also developing the kinds of thinking required for common law, would help to avoid cognitive dissonance and help students accommodate the new ways of thinking.⁹¹ A curriculum which recognises and confronts clashes between local social and cultural expectations and the ethical requirements of common law would help students construct new knowledge while avoiding a culture gap.⁹² Conversely, where students cannot see connections between their own knowledge and experience and the material presented, their learning may be shallow, incomplete or confused.

Engagement can also be increased by the use of appropriate pedagogy.⁹³ The case study showed that practical and experiential learning had been particularly valuable for local participants, and that observation, imitation, and trial and error were

⁸⁹ For discussion of this in the New Zealand context, see Carwyn Jones, 'Indigenous Legal Issues, Indigenous Perspectives and Indigenous Law in the New Zealand LLB Curriculum' (2009) 19(2) *Legal Education Review* 257.

⁹⁰ The need to anticipate and deal with clashes between prior knowledge, experience and beliefs, and 'new learning' was discussed in Aidan Ricketts, 'Threshold Concepts in Legal Education', above n 65.

⁹¹ Ibid.

⁹² Konai Helu Thaman, 'Towards Cultural Democracy in Teaching and Learning with Specific References to Pacific Island Nations (PINs)' (2009) 3(2) *International Journal for the Scholarship of Teaching and Learning* Art 6 <<https://doi.org/10.20429/ijsoitl.2009.030206>>.

⁹³ Konai Helu Thaman, 'Towards Culturally Inclusive Teacher Education with Specific Reference to Oceania' (2001) 2(5) *International Education Journal* 1 <<https://ehlt.flinders.edu.au/education/iej/articles/v2n5/1Thaman/paper.pdf>>.

commonly used to develop the necessary competencies for legal work. Local literature also suggests that Pacific learners benefit from learning strategies which include 'working in groups, interacting with peers and learning through observation, imitation and doing'.⁹⁴ Accounts of specific learning communities in Solomon Islands and Vanuatu also bear this out. For example, research by Lima in one Solomon Islands community observed that 'learning is mainly achieved through practice, participation, observation and imitation'.⁹⁵ In a Vanuatu community, Singo also found learning to be mainly through observation and participation, through trial and error, without time limits, and without punishment for failure to learn.⁹⁶ If these methods of learning help local students to engage with the subject matter and the learning environment, their use is also likely to help them construct new and more meaningful knowledge.⁹⁷ Further research into local learning styles and preferences, and those of students from other South Pacific jurisdictions, would be helpful.

Recognising and acknowledging students' prior learning and experience, finding and presenting materials and perspectives which connect with local life, and creating

⁹⁴ 'Ana Maui Taufe'ulungaki, 'Vernacular Languages and Classroom Interactions in the Pacific' in Konai Helu Thaman (ed), *Educational Ideas from Oceania* (Institute of Education in association with the UNESCO Chair of Teacher Education and Culture, the University of the South Pacific, 2003) 20: 'These are in stark contrast to classrooms where the stress is on [the] teacher — directed individual achievement, competition, curiosity, extended verbal interactions and decontextualized pupil participation.'

⁹⁵ Ronna L Lima, 'Educational Ideas of the Noole (Solomon Islands)' in Konai Helu Thaman (ed), *Educational Ideas from Oceania* (Institute of Education in association with the UNESCO Chair of Teacher Education and Culture, the University of the South Pacific, 2003) 124.

⁹⁶ A G Singo, 'Vernacular Educational Ideas from Pentacost, Vanuatu' in Konai Helu Thaman (ed), *Educational Ideas from Oceania* (Institute of Education in association with the UNESCO Chair of Teacher Education and Culture, the University of the South Pacific, 2003) 129, 130–1.

⁹⁷ This is not intended to essentialise Pacific learners, but to note that participants' responses and local research both point to the utility of these learning activities for local students.

learning experiences which engage students and help them construct meaningful knowledge will all require a high degree of cultural competence.⁹⁸

c) Social Interaction Aids Learning

Social constructivist learning theory also posits the importance to learning of social interaction, which leads to insights and solutions which would not occur in isolation.⁹⁹ Communication during the learning process, in which students ‘observe, try, reflect, and ultimately internalise thought processes’, aids in the creation of meaningful knowledge.¹⁰⁰ Interaction in the classroom also provides feedback to teachers regarding students’ understandings, and allows teachers to provide feedback to their students.¹⁰¹ In the local environment, explicit use of social interaction as a learning tool could have multiple benefits. It would aid learning within the undergraduate curriculum, it would further develop the learning skills which graduates need in practice, and, if used to create strong and supportive student networks, could also be the basis of graduates’ professional networks. Each of these is shown by the case study to be important for local students and graduates. Additionally, it provides further opportunities for students to practise English language.

Past studies have found that

[p]articipating in learning communities is uniformly and positively linked with student academic performance, engagement in educationally fruitful activities (such as academic integration, active and collaborative learning,

⁹⁸ Marcelle Burns, ‘Towards Growing Indigenous Culturally Competent Legal Professionals in Australia’ (2013) 12(1) *International Education Journal, Comparative Perspectives* 226; Tomoana, above n 78.

⁹⁹ Lysaght and Lockwood, above n 63, 91.

¹⁰⁰ Alex Steel, Julian Laurens and Anna Huggins, ‘Class Participation as a Learning and Assessment Strategy in Law: Facilitating Students’ Engagement, Skill Development and Deep Learning’ (2013) 36(1) *UNSW Law Journal* 30, 36–7

¹⁰¹ Lysaght and Lockwood, above n 63, 91, citing Donald P Kauchak and Paul D Eggen, *Learning and Teaching: Research Based Methods* (Allyn & Bacon, 4th ed, 2003) 177–9; see also Tomoana, above n 78.

and interaction with faculty members), gains associated with college attendance, and overall satisfaction with the college experience.¹⁰²

Social, participatory and collaborative learning has been recognised as appropriate for Pacific learners generally,¹⁰³ and was also suggested by study participants as useful both in university learning and in the profession. Local participants suggested, for example, that the Law School

could get groups together to work out how to do stuff; could group students according to jurisdiction and get them to report back and tell one another; and could create a support group ... it's encouraging to see others who understand. More of that in law school would be helpful.

Local study participants also reported that where it was available, interactive learning was useful in practice: *all like conferencing, [where] senior lawyers talk about their experiences, difficulties, and young lawyers can talk also; he's good, he comes around, we can talk to him.*

Conversely, however, and possibly as a result of the high expectations of others, participants sometimes reported a reticence to interact in settings which might show up their ignorance or incompetence. Not only would learning be improved by the explicit use of social interaction at Law School, but this would also normalise and encourage its use.¹⁰⁴ It would teach students how to learn with and from others, the value of doing so, and the importance of social support in their professional lives. It

¹⁰² Chun-Mei Zhao and George D Kuh, 'Adding Value: Learning Communities and Student Engagement' (2004) 45(2) *Research in Higher Education* 115, 124.

¹⁰³ Thompson et al, above n 88, 7: discusses many aspects of teaching which may aid Pacific learners, not least of which is '[s]ocial interaction, sharing and enjoying the company of others [which] enables the understanding and application of the learning.' See also Taufe'ulungaki, above n 94, 19.

¹⁰⁴ For examples of ways to increase the social aspects of learning see Julian Laurens, Alex Steel and Anna Huggins, 'Works Well With Others: Examining the Different Types of Small Group Learning Approaches and Their Implications for Law Student Learning Outcomes' (2013) 6 *Journal of the Australasian Law Teachers Association* 123.

would help students to develop strategies for seeking out and using discussion, feedback and interactive learning in practice.

In an environment where few local people undertake tertiary education,¹⁰⁵ closer interaction with teachers, tutors or peers could help acculturate and socialise students into the unfamiliar and unknown life of a university student.¹⁰⁶ It could also help develop a community of future lawyers. The case study has shown the importance of professional networks and support once graduates are in the workforce, while also demonstrating the limited opportunities offered for this presently. The creation of learning communities and other collaborative and interactive opportunities during the degree could provide a basis for better-developed professional communities later, which would benefit both individual graduates, and the legal profession more broadly.

It is necessary also to refer to concerns about the potential for ‘too much’ interaction between local students. It has been suggested that students from more communal backgrounds sometimes work too closely together and rely too much on one another, potentially hindering development of independent thinking and work habits, and raising accusations of plagiarism. It has been noted in this context that

working together as a group, particularly in cultures based on oral traditions, can result in students in the same group producing similarly worded work even in examination conditions ... Condemnation of plagiarism derives from an assessment system based on individual achievement and competition [while] the production of similar work derives from cultural training which values oral repetition, memorising and shared group endeavour. Here there is an inherent conflict between university standards derived from western cultural norms and the regional

¹⁰⁵ *Solomon Islands 2012/13 Household Income and Expenditure Survey* and *Vanuatu Household Income and Expenditure Survey 2010*, above n 73.

¹⁰⁶ See also Armstrong and McNamara, above n 66, and references therein for research on supporting first year students.

context. Consequently, there is little institutional guidance on plagiarism and [there are] differences of opinion among staff within the same faculty.¹⁰⁷

Explicit instruction, plus working with students to find the right balance between individual and communal activity, might be a useful part of a curriculum which helps students transition to, and understand the expectations of, higher education.

d) Undertaking Authentic Tasks Aids Learning

The final point in terms of learning theory is that authentic tasks ‘help students understand the complexities that arise in actuality’.¹⁰⁸ Authentic tasks include those which learners are likely to encounter in their professional lives, and especially those which emphasise the uncertainty and complexity of the real world. Such tasks help learners to develop more usable knowledge, which is more capable of application in real, complex and uncertain work.¹⁰⁹ Further, the opportunity to use and experiment with newly acquired knowledge, and to incorporate feedback around their use of that, helps students develop mastery or competence, and thus better application of their learning.¹¹⁰ This is extremely important in the local environment where graduates may need to move very quickly from the academic study of law to the practical application of it, perhaps with little guidance to do so. It helps learners to develop confidence in their own abilities, also shown in the case study to be very important.

¹⁰⁷ Corrin Care and Farran, above n 19, 292. See also Corrin Care, above n 26, 179. This is not to suggest that no dishonesty or intentional plagiarism occurs; see Peter MacFarlane, ‘Dishonest Practice — Law Students and Plagiarism’ (Paper presented at the Pacific Island Law Officers’ Network Annual Meeting, Apia, Samoa, December 2009).

¹⁰⁸ Lysaght and Lockwood, above n 63, 92, citing Marcy P Driscoll, *Psychology of Learning for Instruction* (Allyn & Bacon, 2nd ed, 2000) 6–7.

¹⁰⁹ Linda Kam et al, ‘Get Real! A Case Study of Authentic Learning Activities in Legal Education’ (2012) 19(2) *Murdoch University Law Review* 17.

¹¹⁰ Laurens, Steel and Huggins, above n 104.

Authentic tasks require a practical orientation, which suits this environment well. As shown in the case study, local participants reported the importance of practical and experiential learning in developing the necessary competencies for law. There was a clear call from both local and foreign study participants for graduates to have greater levels of practical experience prior to employment. Further, Pacific scholars have suggested that practical and experiential learning may better suit Melanesian learning styles.¹¹¹ Activities such as moots, placements and clinics, all commonly used in legal education generally, could be particularly beneficial here. While each has been used locally, such opportunities may need to be more readily available,¹¹² more strongly signalled as important,¹¹³ and explicitly demonstrated to be authentic. Participants commented, for example,

If I'd known it would be so complex in practice I would have taken more notice.

I thought repeated drafts were boring but now I see they're necessary.

I didn't push myself in mooting because I didn't know this is what I'd be doing in practice.

If they had a court room that's set up as a court room students would take it more seriously ... knowing they'll be doing something similar in real life.

¹¹¹ Melanesian learning styles have been noted by Pacific scholars to include 'observation, imitation and trial and error rather than verbal instruction, the dominant strategy in the classroom.': Helu Thaman, 'Towards Cultural Democracy in Teaching and Learning with Specific References to Pacific Island Nations (PINs)', above n 92, 2. See also Lima, above n 95, and Singo, above n 96.

¹¹² Even when they are running, the clinical and placement programs can cater for only a small proportion of the student body. It appears that at present the law clinic only offers one-off advice rather than opening files and running matters. For information on its current role and status see *Overview of the Community Law Information Centre* (17 July 2017) The University of the South Pacific <<https://www.usp.ac.fj/index.php?id=8402>>. The placement program takes few students only and is not awarded credit. The mooting program is open to all but is optional and not for credit.

¹¹³ For example, mooting and placements have been treated as optional, 'extra-curricular', and not awarded course credit.

i) Mooting

Mooting is an excellent way for students to use their learning in practice, and to consolidate their learning by doing so. Mooting requires students to work across disparate areas of law and to practise multiple competencies in an integrated manner. For example, moot problems can require students to draw on their knowledge of substantive law, make connections between previously discrete areas, and collaborate, research, write, reason and argue. Participants saw the value in this:

Practice, where does that come? Advocacy and moots — they automatically develop analysis, confidence, communication.

We should have moot type problems for each class, each course, year by year. It's an opportunity for the practical application of those laws.

More mooting and even compulsory mooting was suggested as especially beneficial for local law students:

Solomon Islanders want to join in moots but they're too shy. They need to make it compulsory so there's no choice, you need to push them to do it. Also Ni-Vanuatu students face the same problems as Solomon Islands students.

It would make all those who are not happy before a crowd, perform. We need programs to build students' confidence.

More moots, core, in every year. Should be woven into all courses and assessed on what you've done.

It would be a good thing if more mooting was encouraged in law school, you get to know the environment, get confident to speak, we're shy to speak, Solomon Islanders and Ni-Vanuatu are shy to speak. Involve them in moots.

There should be more mooting, it makes it more interactive, it brings people out.

It would be better to get everybody involved, make moots compulsory ... [otherwise] there becomes a big gap between those who do moot and those who don't. It should be compulsory, building up from year to year, first year, second year, third year, fourth year. It gives confidence when you need to go to court.

Requiring students to moot, preferably for course credit, would signal its importance. The benefit of this was reported by one participant in this way: *make mooting compulsory and part of the assessment so the time doing that is valued, and students value it. Often they think mooting is a waste because it does not contribute to grades.* Making mooting mandatory would also highlight the need, and provide the opportunity, to apply knowledge and competencies in a wholly integrated fashion. Importantly, it could also help students from Solomon Islands and Vanuatu to practise English language, gain confidence, overcome shyness and begin to build some of the skills required in practice. Although mooting requires resources, given the importance of communication in English, and the criticisms which have been made of local graduates' communication skills, resources channelled into mooting could provide real returns. To make such a change more likely to be sustained, mooting could be made a required assessment task in some core courses, perhaps at beginner, intermediate and advanced levels. Before assessing it, however, students would need both guidance in the skills and opportunities for practising them.

ii) Placements

Placements also offer excellent opportunities for student learning, and have the advantage of providing necessarily authentic local settings.¹¹⁴ Placements allow students to observe various knowledge areas and legal skills being applied in practice,

¹¹⁴ Placements can also have the advantage of establishing better links between the School and its stakeholders. See The University of the South Pacific, 'Review Panel Report', above n 4, 47.

and in concert. Students become familiar with the environment in which they will work after graduation, and experience opportunities to network and make connections with the profession. As one local participant noted, *placements are good because they open windows for students to see the outside world, because some students go through the whole law degree with the impression that law is a world of its own, and that things work how the text books say they do.* Another suggested that all students *should be attached to a legal workplace from year one, and go there every year, so the academic and the practical can feed off each other.* Participants also reported that, by exposing students to the work of the legal profession, placements help students build confidence in their career choice, and in their own potential to be lawyers in the future. A placement supervisor reported that *two students went to court on Day 1 of their placement. They observed, they sat at the Bar Table. You could see the face of the students totally transformed. They're thinking 'I know I'm in the right place. This degree I'm doing is right for me.'*

Local placements have sometimes been disparaged due to the uncertain quality of supervision, the disorganisation of some local offices, and the potential for students to encounter poor role models rather than best practice.¹¹⁵ On the other hand, placements may be beneficial in providing real examples of local practice, including exposure to authentic ethical and professional issues. The case study demonstrated the need for graduates to not merely know the rules relating to professionalism and ethics, but to be better prepared to actively deal with the challenges likely to occur in, and often specific to, the local context. As there are no local texts on these topics, and

¹¹⁵ USP academics, including study participants and non-participants, have mentioned these concerns to me. See also, eg, Hill, above n 26: 'The Public Solicitor, due to the huge demand, lack of resources, and years without any continuing professional development, did not represent standards which USP students would be encouraged to aspire to.'

little primary material given that disciplinary action rarely occurs, real workplaces may provide the scenarios necessary for learning and teaching. In fact, this may be the ideal time to encounter such issues — while they are still students, and thus in a position to debrief with an academic mentor, receive feedback on their experiences, and work toward development of the skills needed to cope with these and other workplace challenges. Participants also saw the value in this, stating:

That's the workforce, it opens your eyes.

Placements are really valuable, so graduates are not shocked when they start work.

At law school I heard stories like this, but when we got into the legal world we experienced the reality of this ... I was surprised. I believed everything was perfect but I found that things were corrupted.

iii) Clinics

Clinical programs are also valuable for developing students' professional skills, and a number of participants suggested that *law clinic should be a compulsory course*.¹¹⁶ Clinical practice gives students the opportunity to learn and apply the organisational and professional skills that were shown in the case study to need further development. In the clinic, students would be exposed to real clients, real legal problems and real ethical dilemmas, and take part in authentic professional tasks, all of which may otherwise come as a surprise when encountered in the workplace.¹¹⁷ In a well-run clinic, students, and other lawyers, would also see best practice modelled.¹¹⁸ One

¹¹⁶ In relation to USP's Law Clinic see Michael Blaxell, 'Reflections on the Operation and Direction of the USP Community Legal Centre, Port Vila' (2014) 2014 *Journal of South Pacific Law* A1; Hill, above n 26; Grimes, 'Culture, Custom and the Clinic', above n 18.

¹¹⁷ Excellent examples of authentic local scenarios are provided in Hill, above n 26; Blaxell, above n 116.

¹¹⁸ Note, however, that this can be highly dependent on the individual incumbent. Over the years, the USP Clinic has seen both best practice and poor practice modelled.

participant in a statutory office with few senior staff told me she commonly reflected back on her clinical experience: *when I'm stuck I ask myself 'what would [clinic supervisor] have done?'*.

While live clinics are resource intensive and often limited in numbers, simulations mirroring real practice can also be useful,¹¹⁹ especially if the problems used are closely connected to the local environment.¹²⁰ Simulated clinical work has the advantage of being able to use scenarios from a broader range of jurisdictions, whereas 'live' clinics are necessarily situated in one location. Simulated practice could be used in any course, or even for elements of a course,¹²¹ and is not new to the Law School. Prior to the establishment of the School's Community Legal Centre, clinical work was incorporated by adding 'short but integrated components in several classes including contracts, torts and criminal law'.¹²² Similar methods could be reintroduced.

One further important benefit of clinical learning for students from Solomon Islands and Vanuatu is the exposure to authentic *kastom* matters, and to local scenarios not found elsewhere.¹²³ As the case study showed, the interaction of state law and *kastom* is common in practice, but is rarely found in texts or other documents unless it has been a direct factor in litigation.¹²⁴ A clinical supervisor told me that clients frequently approached the Community Legal Centre with no desire or intention to use 'legal'

¹¹⁹ See, eg, Kam et al, above n 109.

¹²⁰ See, eg, Grimes, 'Culture, Custom and the Clinic', above n 18.

¹²¹ See examples in Paul Maharg, 'Assessing Legal Professionalism in Simulations: The Case of SIMPLE' in A Cerillo and A M Delgado (eds), *Barcelona La Innovacion en La Docencia del Derecho a Traves del USO de las TIC* (Universitat Oberta de Catalunya, 2012) <<http://works.bepress.com/paul-maharg/27/>>; and for a broader discussion of experiential learning and simulations, see Paul Maharg, *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-First Century*, (Routledge 2007).

¹²² Grimes, 'Culture, Custom and the Clinic', above n 18, 45

¹²³ Ibid 46–50. See also scenario described by Anita Jowitt, 'The Nature and Functioning of Pacific Legal Systems' (2009) 13(1) *Journal of South Pacific Law* 1; and examples given in Hill, above n 26; Blaxell above n 116.

¹²⁴ Grimes, 'Culture, Custom and the Clinic', above n 18, 60–1.

procedures, but because threats to do so could be used to help initiate, speed up or improve *kastom* outcomes. Other clients wanted legal advice to help decide whether to pursue state law or invoke/submit to *kastom*. This interaction between *kastom* and state systems, including movement between the two, or the use of both simultaneously, is not uncommon, but is found more often in practice than in books. Studies into the use and potential strengthening of *kastom* systems, and interactions between *kastom* systems and state law, are increasing, and hence the area is becoming better documented.¹²⁵ Placements and clinical components can provide students with real exposure to this, from a lawyer's perspective.

Overall, moots, work placements and clinics could each provide students with authentic tasks and learning experiences which would help them make connections between their academic learning and professional practice, and as a result help to develop the work-readiness that graduates need. Further, mooting, placements and clinics would all involve, and help to develop, the skills in social interaction discussed above. Building authentic tasks into the curriculum would provide opportunities for graduates to apply their learning, receive feedback, repeat activities, and develop personal and professional attitudes. Like real legal practice, authentic tasks would allow students to draw on disparate areas of law and apply multiple competencies, working from different directions and for various purposes, in complex, uncertain

¹²⁵ See, eg, Jennifer Corrin, *Towards a New Legal Pluralism: Developing a Systematic, Interdisciplinary Approach to Law Reform and Development in Plural Legal Regimes* (Australian Research Council project 2013–2017) The University of Queensland, TC Beirne School of Law <<https://law.uq.edu.au/project/towards-new-legal-pluralism-developing-systematic-interdisciplinary-approach-law-reform-and-development-plural-legal-regimes-0>>; Miranda Forsyth, 'Spinning a Conflict Management Web in Vanuatu: Creating and Strengthening Links between State and Non-State Legal Institutions' (2011) 43(63) *Journal of Legal Pluralism* 177; Daniel Evans, Michael Goddard and Don Paterson, 'The Hybrid Courts of Melanesia: A Comparative Analysis of Village Courts of Papua New Guinea, Island Courts of Vanuatu, and Local Courts of Solomon Islands' (Justice and Development Working Paper Series No 13, The World Bank, 2011).

settings. Practising such tasks would make legal work more familiar to graduates, make their studies more immediately relevant and applicable, and boost students' confidence in their abilities.

e) Putting It All Together

While broken into four components for explanation, in fact the various tenets of social constructivist learning theory can best be viewed together. Ideal learning environments occur when new learning builds upon students' prior knowledge and experience, where content and activities engage students to help them construct new knowledge in a way that is meaningful to them, where the setting allows and encourages interaction with and feedback from others, and where course content and learning activities are demonstrably connected to the ways and the settings in which the knowledge and competencies will be used. Emphasising outcomes focussed and constructivist approaches would help ensure that curriculum content and pedagogy are both appropriate for the local environment, as they focus on the needs of local students, the local learning environment, and the local setting in which graduates will use their learning. Special attention will be needed to determine how online learning and teaching could incorporate and build upon these approaches.¹²⁶

7. Moving Forward

The above analysis shows that outcomes-based educational approaches, and pursuit of program learning outcomes — appropriately modified, prioritised, integrated and practised — could provide a useful framework and direction for educators, and help

¹²⁶ See, eg, proposal which would place students without access to Law Clinic in 'government departments, court registries, tribunals, commissions and law firms.' Proposal contained in written submission of Robert B Cartledge, 30 July 2012 to Review Panel, cited in The University of the South Pacific, 'Review Panel Report', above n 4, 46.

them to provide legal education suited to students from Solomon Islands and Vanuatu. Pedagogical practices have also been identified which may assist students to achieve the necessary outcomes, assist graduates in their work, and by doing so help to develop local legal professions more broadly. The content and pedagogical approaches discussed above are likely also to be suitable for legal education across the South Pacific, subject to additional research allowing increased contextualisation for other jurisdictions.

There are, of course, many issues which may constrain and add difficulty to any attempt to implement these suggestions. National, institutional, political, financial and cultural issues will all influence what can be done. These issues will vary in magnitude and importance over time. Those currently responsible for directing and providing local legal education will be well aware of these issues and constraints, and in a better position to determine which of them can and cannot be overcome, and how best this might be done. However, in the next section I look at some of the constraints of which I am aware, and make suggestions for how they might be addressed.

a) Need for Research Materials and Resources

As noted in previous literature, and demonstrated by the case study, a larger collection of primary and secondary legal materials is still needed to help local lawyers, and others, to research and understand their own laws and legal systems, and to enable the law curriculum to include sufficient coverage of each jurisdiction. Information relating to the settings and expectations of local legal sectors and broader local contexts (such as historical, political, economic and cultural contexts) is also needed for each jurisdiction. As well as providing necessary knowledge, such resources would enable a curriculum which, through its relevance and connection to the lives,

experiences and jurisdictions of local students, engages the students and helps them to develop as lawyers.

A shortage of legal resources and materials has long been a concern for legal education, noted in relation both to newly independent states generally,¹²⁷ and to the South Pacific in particular.¹²⁸ While the situation has improved, the need for further research resources remains. This shortage of legal resources can be exacerbated by the difficulty of accessing even those resources which do exist.¹²⁹ In addition to strictly legal materials, research regarding the broader legal and professional context has been difficult to access. Local lawyers have rarely written of their experiences, and others writing on these topics often do so for specific purposes and from particular perspectives, such as for grant applications, and donor- or NGO-scoping, program design or evaluation. The need for research into the requirements of lawyers in individual jurisdictions has been recognised by the Law School at least since 2005,¹³⁰ and reiterated in 2012.¹³¹ The case study I have presented offers some information relating to two jurisdictions, but much more research is needed both in these jurisdictions and more broadly across the region.

¹²⁷ Committee on Legal Education in the Developing Countries, *Legal Education in a Changing World* (International Legal Center and Scandinavian Institute of African Studies, 1975).

¹²⁸ Guy Powles, 'Legal Education and Information' (1984) 12(1) *Pacific Perspective* 17, 17; Powles, 'Learning Whose Law?', above n 14, 262.

¹²⁹ Note former USP academic Dr Tess Newton-Cain's comment that it is not always more research that is needed, but better access to that which exists. Discussion between Dr Tess Newton-Cain and University of New South Wales students during 'Pacific Legal Systems' course held at Emalus Campus, USP, February 2015. Note also the practice of Solomon Islands DPP — upon return from any training the lawyers must a) present on that training to other lawyers, and b) file any materials gained from the training to ensure it is accessible to others.

¹³⁰ USP School of Law, 'Teaching Plan 2006–2011' (2005) Action Plan 9 (held by author) includes: 'Undertake survey of graduates and employers of graduates to identify satisfaction of stakeholders and continuing education needs.' Note also the USP School of Law, Annual Teaching Plan for 2011 ((held by author) includes: 'Survey past graduates to assess the relevance of the USP law degree.'

¹³¹ The University of the South Pacific, 'Review Panel Report', above n 4, Recommendation 26: 'the Head of School should identify the requirements for admission into legal practice of the various member countries.'; Recommendation 27: 'the LLB curriculum should be reviewed in the light of the requirements for admission ...'

The creation of local legal research and resources was one of the roles envisaged for the new USP Law School at its establishment.¹³² It appears that in the early years of the LLB even students were commonly enlisted to collect resources from their home jurisdictions in furtherance of this aim.¹³³ More recently, however, brief tenure, heavy workloads, an increased emphasis on staff attaining higher degrees, and a greater focus on peer review and quality rankings have militated against the creation or collation of local resources. Working to build up local research and teaching resources may distract academic staff from required or better rewarded activities.¹³⁴ The panel reviewing the School suggested that,

at the current stage of development of Pacific Island jurisprudence, a catholic approach should be taken in determining the appropriate focus of legal research and scholarship engaged in by [academic staff] ... [T]he production of legal treatises designed for law students, practitioners and governments should be regarded as a legitimate research/scholarly activity given the dearth of such literature in the Pacific. Many members of school are already producing course notes for online teaching purposes and they should be encouraged to convert these, subject to stringent quality control, into legal treatises.¹³⁵

Given local research is essential for improving and contextualising local legal education, a first step may be to reward academic staff for undertaking research that increases the availability of relevant local resources. As well as research projects focusing on local issues, regional visits by teachers could also provide opportunities for

¹³² Angelo and Goldring, above n 13, 104, 107.

¹³³ Conversation between author and Tony Angelo at Australasian Law Teachers Association (ALTA) conference, ANU, Canberra, October 2013.

¹³⁴ The University of South Pacific, 'Review Panel Report', above n 4, 7: 'Fundamental misunderstandings have arisen within the SOL [School of Law], for example, about USP policy relating to postgraduate qualifications required for different levels of appointment in the SOL. This confusion has in turn led to staff being distracted from more pressing tasks by enrolment in PhD degrees. It may have led to some individuals who do have a case for appointment or promotion not pressing their case or being overlooked. The Panel has sought to clarify relevant USP policy ...'

¹³⁵ Ibid 39.

collecting and creating local materials. These visits may include activities such as sourcing existing material or observing local legal/professional activities, and drafting working papers and/or presenting to fellow academic staff upon return. An easily accessible and sustainable repository of all such material should also be created as a priority, as even the resources which have been created are sometimes impossible to find.

Closer connections between the Law School, member states and regional bodies may also assist in the production and collation of local resources. The Law School's 'Program Advisory Committee',¹³⁶ for example, and bodies such as the Pacific Island Law Officers' Network and South Pacific Lawyers' Association could be asked to provide materials, and could also be asked to help the Law School ascertain the needs of law graduates in local jurisdictions. Existing networks, such as those used by the Pacific Islands Legal Information Institute (PacLII) for collection of 'legal' materials, may provide additional avenues for sourcing a broader range of locally relevant materials.

b) Need for Locally Oriented Teachers

For teachers to provide relevant curriculum content and appropriate pedagogy, they will need to understand the local context. Even if outcomes-based education and the articulation of specific program learning outcomes shift the focus from the activities of the teacher to the achievements of the student, the teacher's role is nonetheless pivotal. Despite formal course outlines and reading guides, teachers exert a major influence over the content of their courses, the learning activities included and the assessment tasks undertaken. If they are to facilitate the achievement of learning

¹³⁶ Ibid Recommendation 56: 'that the Head of School re-establish the SOL Programme Advisory Committee ...'

outcomes meaningful to students, and useful to graduates, teachers will need an understanding of the local context and preparation for working in this environment.

As the case study has shown, the knowledge, skills and attitudes required of law graduates depend significantly upon the context of the South Pacific, and of individual jurisdictions. Additionally, the need for students' learning to be built on prior knowledge and experience, to be constructed in a way which is meaningful to local students, and for students to be engaged through relevant and connected learning activities, all require teachers who are well-oriented to the local context.

However, teachers may be unfamiliar with the settings and needs of local environments. They may have misconceived expectations of local students, and few resources to better inform them of students' backgrounds and educational levels. While law teachers drawn from the South Pacific will be more familiar with the Pacific context, and with one or some local jurisdictions, teaching across a dozen jurisdictions means they will also need additional preparation. Due to the array of backgrounds involved, cross-cultural elements will play a part in all activities, and in communication between teachers and students, teachers and teachers, and students and students, which all teachers will need to be aware of and skilled in managing.¹³⁷

While literature about South Pacific cultures is useful, teachers need to keep in mind that this is often authored by Western researchers, and reflects the authors' own

¹³⁷ The extent of this diversity at USP, and the difficulty of working with it has generated the following unfortunate observation: 'In ironically diverse practice, the richer the diversity of culture and language the more reductive the educational process seems to have become.' Clare Matthewson and Konai Helu Thaman, 'Designing the Rebbelib: Staff Development in a Pacific Multicultural Environment' in Colin Latchem and Frank Lockwood (eds), *Staff Development in Open and Flexible Learning* (Routledge, 2nd ed, 2005) 112, 114–5.

cultural perspectives.¹³⁸ In addition, with such diversity in cultures across the Pacific, it is impossible to be familiar with all of them without making gross generalisations. Instead of, or in addition to, learning ‘about’ specific cultures, the Law School could help its staff to develop high levels of cultural competency more generally. In Australian universities, cultural competency is said to include

knowledge and understanding of Indigenous Australian cultures, histories and contemporary realities and awareness of Indigenous protocols, combined with the proficiency to engage and work effectively in Indigenous contexts congruent to the expectations of Indigenous Australian peoples ... Cultural competence includes the ability to critically reflect on one’s own culture and professional paradigms in order to understand its cultural limitations and effect positive change.¹³⁹

Universities Australia has worked with the Indigenous Higher Education Advisory Council to publish extensive material on cultural competency, and has developed guiding principles for Indigenous cultural competency in teaching and learning.¹⁴⁰ In New Zealand, good teaching practices have been identified for those teaching Māori and Pacific students in universities, which again rely not on ‘learning’ about individual cultures but on ensuring that teachers are ‘mindful that every student is different, even within the categories of Māori, Pacific ... It’s about trying to find the space in your teaching to allow all students’ differences to be valued/acknowledged/reflected.’¹⁴¹

This means being aware that individuals will make meaning and learn in different ways based on their background and their life’s journey to this

¹³⁸ Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed Books, 2nd ed, 2012); Bagele Chilisa, *Indigenous Research Methodologies* (Sage, 2012).

¹³⁹ Universities Australia, *National Best Practice Framework for Indigenous Cultural Competency in Australian Universities* (2011) 171 <<https://www.universitiesaustralia.edu.au/uni-participation-quality/Indigenous-Higher-Education/Indigenous-Cultural-Competency-Framework/Indigenous-Cultural-Competency-Framework#.Wi58rHlx2M8>>.

¹⁴⁰ *Indigenous Cultural Competency in Teaching and Learning: Guiding Principles* (2011) Universities Australia <http://www.indigenouisculturalcompetency.edu.au/html/Guiding_P/GP_Teaching.html>.

¹⁴¹ Tomoana, above n 78, 20.

point. Their journey will have been based in a culture and therefore influence their relatedness with me, just as mine is with them. Awareness of these differences is the first step in being culturally aware in the classroom.¹⁴²

Different imperatives drive the need for cultural competency in Australia and New Zealand on the one hand, and the South Pacific on the other.¹⁴³ Nonetheless, without highly developed cultural competency, teachers in the South Pacific will find it difficult to identify and work with both content and pedagogy suited to their students' needs. This cannot be left to individual teachers, however, who may not have the resources to develop this kind of competency. Rather, research makes clear the importance of institutional approaches to cultural competency, and the need for these to be part of broader practice.¹⁴⁴

In addition to the resources discussed above that are necessary to inform teachers of local law and context, teachers will also need resources to help familiarise themselves with the student body. To engage with students, and to provide relevant learning opportunities, teachers will need an understanding of students' diverse backgrounds, especially cultural, linguistic and educational, their prior knowledge and experiences, their preferred learning styles, and appropriate pedagogical methods.

A good example of this is found in the area of communications, an often-contentious topic in South Pacific legal education. Frequent criticism of lawyers' communication skills has been noted in previous chapters, as have some of the challenges of communication faced by local lawyers. If teachers are not well oriented to the local

¹⁴² Ibid, quoting from research participant 'Bernie'.

¹⁴³ See, eg, Marcelle Burns, above n 98; see also *Building Māori Success* (2017) Universities New Zealand <<http://www.universitiesnz.ac.nz/sector-research-issues-facts-and-stats/building-ma%CC%84ori-and-pasifika-success/building-m%C4%81ori-success>>.

¹⁴⁴ Burns, above n 98, 228.

context, these difficulties may be repeated in the classroom. For example, teachers may be unaware that standard English and South Pacific English (and, in fact, American English and Australian English and Aboriginal English) differ.¹⁴⁵ Even those Pacific Islanders who are most educated, and most fluent in English language and who use it most regularly, are likely to have English language which differs in some respects from the metropolitan varieties commonly used in Australia and New Zealand, for example.¹⁴⁶ Foreign teachers may not appreciate the differences between students' South Pacific English and their own English,¹⁴⁷ and tend to treat South Pacific English as simply 'wrong'. The same has been noted in the education of Indigenous Australians by teachers who misinterpret Aboriginal English as merely lazy, uneducated, bad or incorrect.¹⁴⁸ In the South Pacific, foreign teachers are also unlikely to appreciate the difficulty of English pronunciation for those whose native tongue is a Melanesian language, which may make them 'difficult for speakers of some other varieties of English to understand'.¹⁴⁹ Again, the same has been noted of Indigenous Australians whose background languages do not include various sounds found in English.¹⁵⁰ Further, teachers who have learned law in English as their native language may not

¹⁴⁵ John Lynch and France Mugler, *English in the South Pacific* (1999) USP Pacific Languages Unit <<http://archive.today/Z9sl6>> (archived from <http://vanuatu.usp.ac.fj/paclangunit/English_South_Pacific.htm> — no longer available) (held by author); Robin McTaggart and Gina Curró, 'Book Language as a Foreign Language — ESL Strategies for Indigenous Learners' (Report of research commissioned by the Queensland College of Teachers, 2009).

¹⁴⁶ Lynch and Mugler, above n 145.

¹⁴⁷ Ibid. In this paper Lynch and Mugler provide an excellent overview of many of the specific characteristics of South Pacific English, including many examples which both frustrate and infuriate 'other' English speakers. These include, for example, the frequent omission of tense: 'office is close from 12–1'; the use of non-countable nouns as countable nouns: 'we need more furnitures'; the use of singular nouns following 'one of': 'one of my friend will ...'; and a distinctive use of prepositions in certain contexts: 'we should discuss about this problem' or 'to my opinion ...'.

¹⁴⁸ Diana Eades, *Aboriginal Ways of Using English* (Aboriginal Studies Press, 2013) 77, 80; McTaggart and Curró, above n 145.

¹⁴⁹ Lynch and Mugler, above n 145.

¹⁵⁰ Eades, above n 148, 78. 80-83.

understand what makes legal English so difficult for non-native speakers.¹⁵¹ Hence, although law students have previously studied in English language, teachers will need a deep understanding of the local language context if they are to help their students to improve their communication skills.

To add further complexity, communication is not made up merely of words, and, as discussed previously, various other factors will impact upon communications in the local context. This is often apparent in the classroom where the behaviour of students and the expectations of teachers may result in serious misunderstandings. For example, the foreign teacher's experience of verbal instruction as the norm may be very different from local students' learning strategies of observation, imitation, and trial and error.¹⁵² Local students may use silence to show respect and deference, while their teachers may interpret this as rudeness, disinterest or lack of engagement.¹⁵³ Social norms and history will often lead local students to treat books and teachers as the 'authorities', which may discourage them from asking questions and challenging teachers or written resources.¹⁵⁴ Foreign teachers may see this, however, as mere passivity, a refusal to think independently, and an inability to analyse or critique.

¹⁵¹ Aurelia Daukšaitė, 'Is One Semester of Legal English Enough?' (2013) 22 *Studies about Languages* 124, 125. See examples such as archaic words and expressions, inclusion of foreign words, frequent repetition of particular words rather than the use of pronouns, lengthy and complex sentences, passive constructions, highly impersonal style, vocabulary with many meanings etc; Miranda Forsyth and Blayne Haggart, 'The False Friends Problem for Foreign Norm Transplantation in Developing Countries' (2014) 6 *Hague Journal on the Rule of Law* 202, 203: False friends 'are pairs of words that have a similar form and/or pronunciation but different meanings in two languages ... This superficial similarity can lead to the communication of unintentional meanings, unless second-language speakers are made aware of the differences in meanings between the two words or phrases.'

¹⁵² Helu Thaman, 'Towards Cultural Democracy in Teaching and Learning with Specific References to Pacific Island Nations (PINs)', above n 92.

¹⁵³ Corrin Care, above n 26, 178.

¹⁵⁴ Konai Helu-Thaman, 'Hints for Teachers at the University of the South Pacific: (Multi) Cultural Sensitivity (1996) 5(2) *Pacific Curriculum Network*, 6
<<http://directions.usp.ac.fj/collect/direct/index/assoc/D1065015.dir/doc.pdf>>.

Students' unwillingness to compete, and preference for acting communally, may also be seen by teachers as a lack of motivation or interest, and an inability to think for themselves. South Pacific students may not wish to be singled out and may not offer an answer even when they have one. As one law teacher noted, *some students are doing work and doing well but you never hear from them. They don't want to look at me and they don't want me to look at them.*' This echoes the comment of a Melanesian participant in an earlier study: 'I sit, listen, and try and understand but I don't always talk or participate, not because I do not know the answer but because I am respecting the teacher.'¹⁵⁵ Even in regard to other students, local students may prefer to 'compromise to maintain a peaceful coexistence; students may concede points, even if they do not agree'.¹⁵⁶ Non-confrontational behaviour is often preferred by Pacific Islanders, but 'often interpreted by those who do not understand as "shyness" and/or lack of initiative'.¹⁵⁷ This is not to suggest that students do not need to develop the skills and behaviours required of state law, only that understanding their starting points will help teachers to deal with them.

Some resources regarding local law students, and Pacific learners generally, discussed above, may help orient teachers to the local environment. However, the bulk of the literature on Pacific learners tends to relate to Pacific children rather than adult learners. USP's School of Education aims to ensure that its teacher training 'incorporates Pacific values, ethics, knowledge systems and indigenous pedagogy where possible', and so it may be a good starting point for collecting resources

¹⁵⁵ Fiona Pakoa, 'Melanesian Students Negotiating their Identities to Succeed in Higher Education' in *Conference Proceedings of the 16th ISANA International Education Conference, 29 November – 2 December 2005* (International Education Association, 2005) 1, 8
<[http://isana.proceedings.com.au/docs/2005/papers%20\(pdf\)/thur_1515_pakoa.pdf](http://isana.proceedings.com.au/docs/2005/papers%20(pdf)/thur_1515_pakoa.pdf)>.

¹⁵⁶ Corrin Care, above n 26, 179.

¹⁵⁷ Pakoa, above n 155.

regarding Pacific students.¹⁵⁸ In addition, closer connections with individual USP member states and regional bodies may also help in accessing material relevant to local learners and pedagogy appropriate to the South Pacific.

Direct observation or more formal research could also be conducted with local students in law classrooms, so long as local research protocols are adhered to. Again, it is important that teachers document their own learning to make it accessible to others, and to ensure that it remains so. Recording their observations and experiences of what does and does not work, sharing successful teaching strategies and materials, presenting their research to other teachers, or producing working papers on learning and teaching topics would create resources for others, but again need to be encouraged by reward and recognition.

i) South Pacific Teachers

Local lawyers reported benefiting greatly from the teaching and guidance of highly experienced foreigners, and there was no suggestion in the empirical work that foreign educators should be phased out. However, encouraging and developing local people as legal educators would further the decolonising process by increasing local ownership, providing local role models, acknowledging and valuing local knowledge and expertise, and adding relevance to local legal education. Even prior to the introduction of the LLB degree there were suggestions that individual Pacific law students and graduates be nominated by their countries as potential academics, and given opportunities to further their studies in preparation for such roles.¹⁵⁹ Local staff could help inform the

¹⁵⁸ *Message from the Dean of the Faculty* (18 October 2017) The University of the South Pacific, Faculty of Arts, Law and Education <<https://www.usp.ac.fj/index.php?id=17960>>.

¹⁵⁹ Asking local jurisdictions to identify potential local staff was suggested prior to the establishment of the law degree: Powles, 'Learning Whose Law?', above n 14, 264.

broader curriculum, through their understanding of local cultural and social matters, and possibly of more appropriate pedagogical approaches. Local teachers could greatly assist foreign teachers with knowledge of and orientation to the local context. USP policy already includes a preference for appointment of local staff.¹⁶⁰

The case study has shown that to educate for the local context the curriculum requires local knowledge, local understanding and local experience. This is so not only for peculiarly local topics like *kastom*, but across the curriculum more broadly. In addition to knowledge of laws, legal systems and legal institutions, teachers also need an understanding of how these are used, how they might be adjusted or improved, how legal and community institutions interact, and how law's demands might conflict with other demands. One local study participant mentioned the importance of local teachers:

better to bring in people from within the region. Those from outside may not be able to answer questions from within the region. I was taught Current Developments in the Pacific, online, by an academic in Canada! But how to encourage locals to be academics? You could teach locals to be academics, otherwise it is very difficult to localise the curriculum.

The appointment of more local academic staff may also aid in creating a more stable workforce, without the pull which foreigners have to return to their home countries. However, local academic staff who participated in interviews mentioned poor pay, high workloads, lack of support and lack of opportunity as characteristic of academic work at USP. For example, one local participant working in the Law School stated:

We need better support for teaching, teaching assistants, more staff, more incentives for staff, more recognition. The staff review process is very

¹⁶⁰ The University of the South Pacific, *Human Resources Policies and Procedures*, 5.8.01 Recruitment & Appointment Procedures (2010), 2 <<http://www.policies.usp.ac.fj/index.php?docid=3505>>: 2.1.7 ... 'All other considerations being equal, preference will be given to regional applicants.'

burdensome, filling out many forms, then submitted, then decided by people who hardly know you, so they often don't see the work you put in for the output ... then decisions made in Suva should be translated to academic staff ... daunting bureaucracy and administration, it takes ages for them even to reply to email. Even leave applications, you fill in the form, it goes to the Head of School, then goes to the Dean, then you wait for approval. The timetabling of classes and exams ... issues with rooms, clashes. Lecture theatres, the environment itself makes a difference, at the back of the room students can't hear ...

When asked if there were opportunities for gaining further knowledge and skills, another local academic participant replied, *yes and no. In theory yes, but in practice it might not be possible, too high work load, too little time.*

Despite encouragement from a foreign academic to consider joining USP, one local participant mentioned concerns about that course of action: *Why do people keep leaving USP? Why do they come and go so much?*¹⁶¹ The experience of current staff, along with possible ambivalence of graduates toward careers in the Law School, may make it difficult to attract and retain local staff. These issues would need attention before any push to increase local staff numbers.

At USP the most junior academic positions of tutor and teaching assistant are reserved for appointees from the Pacific region, and assistant lecturer positions 'would normally be expected to be filled by regional citizens'.¹⁶² Unfortunately, local staff at the Law School have tended not only to be appointed to quite junior positions, but to remain

¹⁶¹ The same participant added, *when I say I have a USP law degree people treat me as second rate. Is USP really a second-rate law school? Is it a really badly rated university?*

¹⁶² The University of the South Pacific, *Human Resources Policies and Procedures*, 5.8.01 Recruitment & Appointment Procedures, above n 160, 2: 2.1.4.

for long periods at junior levels.¹⁶³ In response to the Law School's own acknowledgement regarding 'lack of oversight, mentoring and supervision' of junior academic staff, and 'little mentoring or development of staff to enable them to take on higher positions within the School of Law',¹⁶⁴ a Panel reviewing the Law School recommended that 'the career trajectories of those currently employed within the [School of Law] should be negotiated ... taking into account the particular needs of the School and the particular skills and aspirations of the academic concerned'.¹⁶⁵ The panel also suggested that the 'emphasis of appraisals should at this stage be on staff mentoring and development'.¹⁶⁶ Creating and implementing leadership and development plans would ensure that local staff have real opportunities to fulfil their potential and to reach the highest positions in the School. This may both encourage local staff to join the Law School, and encourage them to stay even when alternative opportunities present themselves.

It is necessary of course to acknowledge resourcing issues, but stronger leadership in local staff development is not necessarily a matter easily reduced to costs. Not providing leadership also burdens the institution. Creating expectations that local staff will progress to higher levels, and resourcing those in senior positions to lead and mentor more junior staff, would be a good starting point. This may also require better rewarding good leadership practices.

¹⁶³ Note also that 'All academic positions revert to Assistant Lecturer level upon becoming vacant, unless a strong case is put up by the Faculty/Institute to retain the position at a higher level and this is approved by the Vice-Chancellor or delegate.': Ibid 1, 2.1.2. This can create problems for building up experience/seniority/leadership within the staff body as a whole.

¹⁶⁴ The University of South Pacific, 'Review Panel Report', above n 4, 32.

¹⁶⁵ Ibid 32–3.

¹⁶⁶ Ibid 32.

ii) Preparation for Teaching

Study participants stressed the importance of local law being taught and learned in context, a task for which many academics may be unprepared. Rather than glossing over the challenges and complexities of the roles teachers are taking on, better preparation is necessary, as also recognised by the latest review of the Law School.¹⁶⁷

A program for preparing local and foreign teachers together would help acculturate foreign teachers to local law and local environments, provide further grounding in state law for local teachers, immediately connect local with foreign teachers, and connect both with the educational mission at hand. One local teacher said, *it would be good to sit with other academics for a whole month to discuss what to teach*. It may break down cultural and knowledge barriers earlier, and avoid the ‘us and them’ perspective sometimes evident in study interview responses.¹⁶⁸ Such preparation could provide a really good point of intersection between local teachers who may still find common law, state legal systems and English language challenging, and foreign teachers who may have little knowledge of the local environment, local legal and social systems, and local languages. Further, preparation for teaching should include information regarding the educational, linguistic and social backgrounds of students to help teachers ensure that their teaching methods are culturally and educationally appropriate, and that materials and content build upon students’ life experiences.

¹⁶⁷ Ibid Recommendation 11: ‘New members of staff should receive a specific induction into the SOL, its programmes and teaching methods.’

¹⁶⁸ For example,

There’s a mentality that says USP lawyers are not as good as those out of [Australia] for example. How to compete? Need to build confidence in local students. Workforce mentality, expat lawyers think that expat lawyers are better, local lawyers think that they are just as good. But they get beaten down by the expat view over a period of time. Locals need confidence building so they can withstand that attitude. Colleagues say expats like to think they’re better. They’ll think they’re smarter than anyone else ...

In preparing foreign teachers it may also be possible to cut costs by piggybacking on the cultural and language training given to staff involved in legal strengthening and capacity-building programs. As aid donors try to increase local ownership of these programs they are becoming more careful with recruitment of appropriate staff, and offering more thorough training prior to deployment in the local environment.¹⁶⁹ Their examples and activities may help with recruitment and preparation of foreign law teachers also. Long-term or outgoing aid and NGO workers may also be willing to help familiarise new teachers with the local environment.

iii) Developing Pools of Potential Teachers / Knowledge Resources

Local staff are likely to enhance local ownership and relevance of the law degree, provide role models for students, and potentially increase stability in staffing. Further, they can provide a deeper and more practical picture of the environment within which local lawyers work. Foreign staff often have more extensive teaching and research experience, and can assist both students and local staff to develop academically and professionally. Foreigners who have been working locally may also have a better understanding of local context than some other teachers will have. It would be useful to identify and build pools of knowledgeable people, both local and foreign, from which the School could draw for both long-term positions and for occasional involvement or assistance.

It may not be necessary to focus on academic backgrounds. A deep knowledge and experience of the local legal environment, for example, as a lawyer, judge, politician,

¹⁶⁹ See, eg, Australian Government Department of Foreign Affairs and Trade, *Stretem Rod blong Jastis mo Sefti (SRBJS): Vanuatu–Australia Policing and Justice Program 2017–2020, Program Design Document* (August 2016) 10, 4.2 <<http://dfat.gov.au/geo/vanuatu/development-assistance/Pages/improving-community-safety-resilience-vanuatu.aspx>>; Coffey International Development and the Whitelum Group, *Solomon Islands Justice Program Design Document, July 2017 to June 2021* (Australian Government Department of Foreign Affairs and Trade) Annex C.

public servant, policy maker, Adviser or NGO worker may be equally useful. Until now, USP recruitment has focused on academic credentials, but casting a wider net would improve the chance of finding both local and foreign recruits familiar with the local environment and local legal systems, and who may have some insight into local legal educational needs. In place of academic research, they may have other relevant expertise as well as existing connections and networks within local legal sectors. They may have a better understanding than many academics of how theory works in practice, as well as expertise in different types of research, including empirical, statistical or social policy-based research, which legal academics may not have.

Such people could be drawn upon to pass on their knowledge and experience through longer-term roles, or through occasional teaching, helping to develop teaching materials, advising on research, judging moots, and helping to orient new staff, either generally or in specific areas.¹⁷⁰ For long-term staff, foreigners drawn from the legal strengthening or NGO communities, or the private profession, may be able to make a greater contribution in a shorter time than those coming directly from overseas, as a result of their familiarity within the local environment.

iv) Team Teaching and Local Interaction

Having a mix of local and foreign staff could create and improve partnerships which would help educate both, strengthen engagement, acknowledge local ownership, and build confidence amongst local staff.¹⁷¹ It would provide local role models for students,

¹⁷⁰ Grimes, 'Culture, Custom and the Clinic', above n 18, 65, suggested that 'outside lawyers can be drawn into the work of the law school, for example through adjunct positions, and work alongside the staff and students in the running of clinics.' Grimes, 'Legal Education in the South Pacific', above n 11, 15, also noted the importance of the involvement of private practitioners, especially in the practical training program.

¹⁷¹ However, local people may not readily take the lead amongst foreigners, so it would be necessary to make space which genuinely engaged with and valued the input of local people. Note that tensions or

not only during the degree but for the longer term also. It would be possible to use the strengths of both foreign and local teachers in various aspects of the curriculum. For example, legal ethics may be seen on the one hand to be universal, and on the other extremely local. Hence, team teaching could be an excellent way to provide both content knowledge and contextual understanding, both theoretical bases and practical insights. The interaction of foreign and local could highlight differences and similarities, synergies and conflicts, while allowing creation of more relevant resources and materials, including locally based exercises, case studies, etc. The involvement of legal practitioners may help to create connections and interactions between students, teachers and the legal profession, and familiarise academic staff with aspects of practice.

Given the locations at which law is taught, local people available for assisting in the Law School are likely to be predominantly Ni-Vanuatu and Fijian. However, the regional nature of the South Pacific means there are frequently people from many South Pacific jurisdictions in any place, and the School could make use of even short-term visitors. In addition, increased involvement between distance learning students and local legal professionals in their own jurisdictions would be valuable, and should be encouraged.

Both local and foreign teachers could also engage with local institutions through, for example, visits to courts, parliaments, public sector offices and NGOs, with or without their students, both to learn about the local environment and to demonstrate their engagement and willingness to learn. One of the great advantages of a small

difficulties may be broader and deeper than simply domineering foreign staff and deferential local staff. Both local and foreign staff can be challenging to work with, uncooperative, protective of their own knowledge etc.

community is the ease with which people and places can be accessed. My experience has been that local people are often keen to share their knowledge.¹⁷² All these activities could create connections and networks between the profession and teachers, students and the university, and acknowledge the importance of practical knowledge and of local knowledge.

c) Need for Review of Curriculum

As discussed in Chapter Three, both the structure and content of the local law curriculum were modelled on a common-law curriculum widely used up to the 1990s. While many changes have been made over the years, the panel reviewing the Law School in 2012 recommended a further curriculum review,¹⁷³ and the Law School is currently preparing to undertake this. Now, with more experience as independent states, greater distance from the colonial past, and 20 years since the first graduation of law students, a total re-think may be appropriate.

As discussed above, there is a need for further research to inform any curriculum review with regard to:

- the content and context of local law, local legal professions, and the broader environment within which they operate;
- local students, local issues relevant to learning and teaching, and broader pedagogical considerations; and
- what content and competencies are now essential, desirable and relevant in member countries.

¹⁷² For example, when I took a class of students to Vanuatu we were made welcome in parliament and in various public sector offices, and had many guest speakers from environmental groups, Melanesian Spearhead Group, Vanuatu Women's Centre, and other NGOs. On the other hand, I have also heard of local teachers jealously guarding their knowledge from foreign teachers.

¹⁷³ The University of the South Pacific, 'Review Panel Report', above n 4, Recommendations 26–28.

Better connections and communications with USP member states could help uncover their aspirations for the future. Curriculum content, organisation and pedagogy could then all be looked at afresh, with reference to current legal educational theory and practice, through a whole-of-curriculum approach.

In a law degree which is taught for students from multiple jurisdictions, it is clearly easier to focus on commonalities than on differences.¹⁷⁴ A predominantly ‘common law’ approach has saved re-invention to some degree, and allowed academics from common-law jurisdictions to design and teach local law courses. As the major commonalities here are introduced legal systems and English language, it may be argued that these should be the focus of a common legal education, with individual nations catering for those matters specific to their own jurisdictions. On the other hand, in the light of findings from the case study I have conducted, it appears that a more concerted focus upon the needs of member countries would now be a worthwhile goal of reform for the undergraduate degree. The alternative option of individual states providing their own legal training would both detract from the development of regional citizenship,¹⁷⁵ and be extremely resource heavy given the small populations of these states.

¹⁷⁴ Powles, ‘Learning Whose Law?’, above n 14, 262.

¹⁷⁵ Pacific Islands Forum, *The Framework for Pacific Regionalism* (Pacific Islands Forum Secretariat, 2014) 1: ‘[T]here are significant benefits to sharing and combining our resources to leverage our voice, influence and competitiveness, and to overcome geographical and demographic disadvantages.’ Pacific Forum Leaders embrace Pacific regionalism as the

expression of a common sense of identity and purpose, leading progressively to the sharing of institutions, resources, and markets, with the purpose of complementing national efforts, overcoming common constraints, and enhancing sustainable and inclusive development within Pacific countries and territories and for the Pacific region as a whole.

Regionalism is also a priority of USP. The University of South Pacific, *Strategic Plan 2013–2018*, above n 5, 16: The ‘challenges that Pacific Island Countries (PICs) face reinforce the significance of regional co-operation and integration.’

However, while there will be matters which are highly jurisdiction-specific, as highlighted in the case study, there will also be matters of broader relevance. Assuming the necessary research was undertaken, educators would be better able to determine the areas common across common-law states generally, common across the region, or specific to individual jurisdictions. By condensing or removing extraneous material,¹⁷⁶ additional space may be freed up in the core curriculum for topics more relevant to local jurisdictions, and common to all of them.¹⁷⁷

Tutorials attached to core courses could also stream students, for example by jurisdiction, especially in some parts of the first-year program. Tutorials streamed by jurisdiction would provide an opportunity to look more deeply at content from students' home countries, as well as taking account of students' educational, linguistic and cultural backgrounds. Streamed tutorials may also be useful in some later year courses. The ethics course, for example, could cover common elements of ethics, and even state-specific rules. Streamed tutorials might look at special challenges arising in individual jurisdictions, and help arm students with the practical tools for dealing with them. Tutorials streamed by jurisdiction should not be overused, however, especially given the importance of students practising English language, which they may avoid if grouped with others from the same home jurisdiction.¹⁷⁸

With more research related to individual states, matters relevant to fewer jurisdictions could form the basis of electives. Such courses may be open to all students, but

¹⁷⁶ See, eg, The University of South Pacific, 'Review Panel Report', above n 4, Recommendation 23: 'that the School of Law consider consolidating Torts 1 & Torts 2 into a single course.'

¹⁷⁷ For example, at present full year courses on tort and contract law are core while the course 'Current Developments in the Pacific' is not.

¹⁷⁸ Note also the need to ensure students become comfortable working with individuals and groups from other jurisdictions and ethnic groups. Corrin Care and Farran, above n 19, 292; Corrin Care, above n 26, 179.

mandatory for those whose home states identify the area as essential. For example, customary land tenure may be required for students from some jurisdictions but not others. Individual states might nominate different areas as essential at different times, to meet local needs as they arise. Ongoing student attachments to workplaces in their home states could also help them ground new knowledge, whether common across the region or jurisdiction-specific, within the context of their home states.

In the meantime, whatever resources are garnered through the avenues described above could be fed into the curriculum incrementally to improve its fit to the jurisdictions it serves, and fed into teachers' orientation to help them understand the students they will teach and the environments in which their graduates will work. Every bit of additional knowledge and understanding will help teachers provide learning materials and activities which connect to the local environment, engage students and help prepare graduates for local legal professions.

d) Need for Action — by Whom?

While the above has focused on what might be done, this final section looks at who might do it.

As is apparent from this research project, there are many actors interested in local legal education. USP, the Law School and its teachers, governments, lawyers and professional bodies, donors, Advisers, NGOs, and bodies such as the Pacific Islands Law Officers' Network or South Pacific Lawyers' Association may all find the work undertaken for this thesis, or aspects of it, relevant to and applicable in their own activities. As an outsider, I leave it to those on the ground to determine what the study means for them, and what role it might play in producing any subsequent strategy for

reform. However, in view of the practical aspirations of this body of work, this section offers some brief suggestions as to how different actors might move forward using the insights from this research. All the bodies mentioned above have a mutual interest in the betterment of local legal education, and a role to play in achieving that.

Improvements at each stage of legal education would take pressure off other stages, and no single education provider should be expected to prepare graduates for professional life. One local participant commented that *we can't expect USP to do everything for every job we take on later*, while a foreign participant noted that *it is not all the job of USP to make the profession work*. However, in terms of undergraduate legal education, the Law School has both great opportunities and great responsibilities. Fundamentally, it needs to provide legal education suited to the needs and aspirations of its member states. It could better ascertain those needs and aspirations by reaching out to all the bodies mentioned above, creating and maintaining closer links with them, providing regular and real opportunities for their input, engaging them in the School's activities, and keeping them informed of how the School could benefit from their expertise and resources. The School could better reward staff who produce research and resources relevant to local jurisdictions, and make it more attractive for them to do so. It could draw more broadly on educational theory and practice generally, and in relation to local learners specifically. Using information from these various sources, the School could reform its curriculum to give greater emphasis to local context, and the needs of local students and local jurisdictions.

To deliver its curriculum, the Law School needs a stable, professional body of teachers. It could help create this by better orienting its teachers to the local environment, local law and local students, and by providing ongoing professional support and leadership.

In recruitment, the School could give greater recognition to practical and professional experience, and to knowledge of and commitment to South Pacific law and legal education. It could provide resources to help teachers contextualise their courses and materials, and support teachers to introduce learning activities suited to local students and local graduate needs. In addition, because ‘law’ teachers may not have the expertise to help students develop all the competencies needed locally, the School may also need to engage specialist teachers such as instructors in English, writing, or clinical and professional skills.¹⁷⁹ To avoid additional costs, specialists might be targeted for places within the School’s allocated staff numbers, responsible for specific areas but still teaching across the curriculum. Alternatively, specialist training could be provided as professional development for teachers willing to undertake these roles. Any and all of these activities could enhance the reputation of the Law School, help to attract and retain high quality staff and students, and produce positive outcomes for local graduates and local legal sectors.

Current and past teachers, and particularly local staff and those with greater local experience, might provide support and mentoring for newer teachers, and help to familiarise them with the Law School, with local students, and with the educational needs of local graduates. By recording and making accessible their own experiences, and by providing suggestions for relevant materials and learning activities, they could help newer teachers to contextualise both curriculum content and teaching practice.

¹⁷⁹ The teacher re-designing the first-year courses told me she did not wish to teach them as she ‘didn’t want to be seen as “the writing teacher”.’ Hence explicitly employing ‘a writing teacher’ or a ‘clinical instructor’ may help to overcome this problem. Note specialist teachers or training was suggested by Arthur Faerua, above n 86, 44: ‘[W]hile law teachers are qualified and capable of teaching about the law in all its various subjects and fields ... they usually have no or very little specialised training in the pedagogical techniques of teaching legal writing skills ... the advantage of undergoing specialised training is the opportunity to become exposed to tried and proven techniques of teaching legal writing skills.’

All academic staff could focus at least some of their research on local issues, could attempt to make closer connections between the topics they teach and the local context, and could genuinely try to match their pedagogical methods and the learning activities they provide to the needs and preferences of local learners.

Both the Law School and its teachers could better achieve the above with greater support from the university, and may be somewhat stymied by current policies and practices. USP could help teachers and the Law School by reviewing its tenure policies and contract terms, providing resources for enhanced orientation and professional development activities, strengthening leadership in research and teaching, and adjusting recruitment and promotion policies to recognise the importance of locally relevant contributions rather than solely academic achievements. The university could commit resources to local research, creation of appropriate teaching materials, curriculum review, specialist teachers and experiential learning. As reputation plays a large part in international rankings, ongoing improvement of the education offered would coincide with USP's own aspirations in this sphere. With real commitment from USP a great deal could be achieved. Without that, it will be much more difficult to create substantial and sustained improvement.

Lawyers, professional bodies, and others such as the Pacific Islands Law Officers' Network could initiate and maintain closer connections with the Law School, keep it informed of local needs, provide relevant legal materials, and contribute their expertise and other resources. Governments of USP member states could deliberately and regularly communicate their needs and aspirations to the Law School, provide access to local legal resources for use in teaching, and ensure that law students (and possibly teachers) have access to local placements to familiarise them with their home

legal environments. Donors, Advisers and NGOs could likewise initiate and maintain close connections. They could offer more generalised support, providing mentors, moot coaches and judges, or modify some of their programs, such as advocacy workshops, for offering at degree level. Through work with individual lawyers and legal offices in these jurisdictions, they are also in a position to support the collation and creation of local research materials and teaching resources. Donors and NGOs may be in a position to fund discrete pieces of research to help inform the curriculum, especially research carried out by local people, which would tie nicely with the existing legal strengthening programs running in Pacific jurisdictions. Donors and NGOs might offer their expertise in orienting aid workers to help the Law School prepare new staff for the local context.

In short, there are many individuals and bodies interested in the improvement of local legal education, and in a position to contribute to this. A commitment of resources by USP would enable real change, but even without this, if the Law School could harness the resources of other potential contributors, it may be more able to create a curriculum which meets local needs and aspirations, and to provide a stable, well-supported body of teachers to deliver, and further enhance, that curriculum.

8. Conclusion

This penultimate chapter has moved beyond the case study to consider its implications for local legal education. The case study demonstrated a need for graduates to be prepared for local legal workplaces, and this chapter looked at what that preparation might include, and how it might be achieved. Contemporary educational theory and practice, including moves toward outcomes-based education, the development of broad learning outcomes, and the use of social constructivist learning theory were all

shown to have something to offer local legal education. While program learning outcomes were seen to provide a useful framework at an abstract level, at a more concrete level it was clear that meaningful development of these would require them to be closely contextualised to the local setting, emphasised to meet the needs of specific jurisdictions at different times, well integrated with one another, and repeatedly applied and practised. Potential methods for achieving this, drawing from the case study and from educational theory and practice, were then examined.

This chapter also discussed the need for a fuller body of accessible local research, better orientation of teachers, and incremental or larger curriculum review. Finally, while not wishing to pre-empt the activities of others, the last section suggested how various actors might contribute to the further development of local legal education. Hopefully, this chapter has provided for educators some initial ideas as to how the insights from the case study may be operationalised in local legal education.

The following chapter concludes the thesis, and offers final reflections on the project.

CHAPTER EIGHT: CONCLUSION AND REFLECTIONS

This thesis has illuminated the legal environments of Solomon Islands and Vanuatu. Original research has provided an insight into the learning and development opportunities available to local lawyers, the challenges they face in the legal sector, and the competencies they need for working in these environments. This work has provided space for local participants to have their voices heard, and their views and experiences documented so that future decisions about local legal education can take these into account. For legal educators, this work has provided authentic, first-hand and previously undocumented material regarding the local legal context, professional aspirations and needs, and the complex factors which impact upon local lawyers. While further research is needed, this thesis has begun to redress the information deficit concerning the legal educational needs of local lawyers and local jurisdictions.

1. Overview of the research project

Chapter One sketched some of the criticisms that had been made of contemporary legal education, and lawyers, in the South Pacific. It also explained my own background and experience at the University of the South Pacific (USP), and the potential mismatches I encountered there. The chapter reviewed the existing literature on Pacific legal education, and identified some of its limitations in helping to understand the local legal environment and the needs of local lawyers.

Chapter Two set out how I went about addressing the need for further information, drawing upon scholarly research into the conduct of empirical work. This raised my awareness of issues relating to research with Indigenous and formerly colonised peoples, and helped me to remain attentive to potential local ambitions for

decolonising legal education, and decolonising South Pacific states more generally. The chapter explained the research methods used, which included extensive interviews with those involved in local legal sectors. Providing information about the backgrounds of participants, their professional status and roles in the legal system, and separating local from foreign participants, helps to provide further context to readers. Understanding the position of the speakers should be helpful for those who wish to draw upon this body of work in devising future strategies and conducting further research.

Chapter Three familiarised readers with some of the historical legacy that marks the legal system and legal practice in Solomon Islands and Vanuatu today. This is of continuing importance, as all actors in the legal system are constrained in various ways by the structural frameworks in which law operates in these jurisdictions. There are also values and expectations about the nature of laws and legal practice embedded in these frameworks, even though they provide little detail that helps us to identify and develop appropriate educational content or skills.

Chapter Four addressed this context further by highlighting the original expectations surrounding the legal profession in the South Pacific, which included the need for legally trained personnel to assist in the strengthening and development of newly independent states, and the need for those personnel to be equipped to work within the local context. The research I conducted has shown that these objectives are still highly relevant today, and that there remains an unmet need for local lawyers who are equipped for the work required in local jurisdictions.

Chapter Five explained the law curriculum currently on offer for students in the South Pacific, showing that superficially it is very similar to that offered in many other common-law jurisdictions. A closer look revealed a commitment to contextualise the curriculum to ensure its local suitability, and to develop the attributes required by local lawyers, while also keeping up with developments occurring in legal education elsewhere.

The case study in Chapter Six has provided a solid information base to feed into future attempts to reform local legal education and training. It also serves as a snapshot of the issues, challenges and interests of those working to provide legal services and legal education for Solomon Islands and Vanuatu.

In keeping with the original ambition of undertaking this thesis, which was to make a practical contribution that might further support the development of local legal education and the legal profession in the Pacific region, Chapter Seven sketched some of the possible ways forward, based upon the key findings of this research project.

2. Final thoughts

Returning to where this thesis began, I became aware while teaching law at USP that local lawyers were the subject of considerable criticism. At the same time, USP was keen to introduce program learning outcomes (PLOs) across its degrees. However, there was little information regarding which PLOs might be appropriate for the Bachelor of Laws (LLB) degree. Although I was teaching across four core courses, and involved in drafting these PLOs, I was cognisant of how little I knew of the local context, and how hard it was to find accessible relevant material.

Aware that the scant literature regarding South Pacific lawyers and legal education was produced almost exclusively by foreigners, and aware of my own position as an outsider, I set out to gather information more grounded in the local context. I sought out and tried to devise a methodology appropriate to and respectful of local people and issues. I tried to understand what I was told by participants with as little preconception as possible, to relay their views faithfully, and to provide them with opportunities to review and make suggestions on draft work. While documentary data and the information from foreign study participants were in no way discounted, the views of local participants were distinguished and given precedence where possible, in recognition of their importance.

Providing a picture of the local legal environment and the experience of lawyers within that is itself important, as it sheds light on a previously poorly understood phenomenon. In addition, the research also fulfils a strategic aim. It has uncovered a range of issues which bear upon the educational needs of local law graduates, and which may provide a basis for action and reform. In relation to Solomon Islands and Vanuatu, the research has demonstrated the importance of work-readiness for local graduates, and provided insight into what work-readiness entails in these jurisdictions. It has confirmed the relevance of the learning outcomes previously articulated by the USP School of Law, while also exploring what they might mean in the local context, and at a less generic level. It has helped to uncover and define areas of learning relevant for inclusion in the local law curriculum, and identified pedagogical practices through which students might be helped to achieve that learning.

Much of the detail that has been presented in this thesis will relate only to Solomon Islands and Vanuatu. In particular, specific cultural issues raised in this work are likely

to relate only to Melanesian peoples. Different details, and different cultural issues, of no less importance, will exist in relation to other South Pacific jurisdictions, and will also need to be uncovered and considered in decisions regarding legal education. It is likely, however, that much of the work presented in this thesis will be more broadly applicable. Given that all USP member states have predominantly Indigenous populations, are recently independent, are working with introduced systems and institutions, and are still developing legally, politically and economically, it is probable that there will be significant overlaps between the requirements of all states in terms of legal education. Nonetheless, further research is urged to ensure that the needs of Pacific jurisdictions, legal professions, law graduates and law students are understood, so that legal education can be tailored to produce graduates 'that are well equipped to enter the legal professions of those countries'. At its broadest, the research has demonstrated the importance of contextualisation in legal education, and especially in South Pacific legal education.

Much of the research presented in this thesis is open to other interpretations. It does not claim to present every perspective on the issues canvassed. Rather, the case study presents a picture of the work of lawyers, their learning needs and local legal environments during a particular period. During the conduct of the research and since that time, changes will have occurred. Nonetheless, while details are fluid, the overall analysis is supported by empirical research and the view presented draws its validity from this foundation.

For others contemplating similar research it is worth offering a brief reflection on the process. Readers will be aware from the methodology chapter of the many issues which arise in regard to Westerners conducting research with Indigenous and formerly

colonised peoples. While the current topic was of importance to both local people and foreigners, the entire area is complex and to some degree contested. Local states, state legal systems, state law, the legal profession and legal education are all products of colonialism. As a teacher and researcher, I aimed to contribute to the ability of local people to work within and further develop their own legal environments, but needed to do so by teaching introduced law in a degree program and an institution both based on foreign foundations. I conducted the research in the hope of making some contribution to bridging that divide. Having myself commenced teaching in the South Pacific with only a rudimentary knowledge of the local context, I felt that any work which helped others in similar positions to understand the local legal environment, and the needs of local students and graduates, would be worthwhile. In addition to helping inform individuals of the local context, the research could also have implications for local legal education more broadly, as discussed in Chapter Seven.

In light of the methodological concerns outlined previously, I was also somewhat concerned about attempting to shed light on the local legal environment by repeating the words and work of foreigners whose world views, experiences and expectations would have been formed elsewhere. I was concerned that earlier work undertaken for specific purposes, such as funding applications, may have emphasised the problems which needed addressing while skirting around positive situations. Conversely, earlier work undertaken to report progress on grants or projects may have emphasised successes while downplaying continuing difficulties. In the end, as the contributions of local participants were not incongruous with the reports of foreigners, I was reasonably satisfied that I was not overemphasising either positive or negative accounts. Nonetheless, greater autonomy and independence in local jurisdictions

depends to some extent on local people telling their own stories, making their own decisions about matters which concern them, or at least ensuring their perspectives are available for input into decisions made by others. It is important therefore that researchers take account of the views of local people wherever possible, and support local researchers to provide their own accounts of local phenomena, and their own assessments of local needs.

I was concerned that by taking an interpretive approach, rather than a transformative approach, the work may be viewed as endorsing or affirming current systems and processes, which was not my intention. However, where the aim is to decolonise legal structures and knowledge systems, I understand that work aimed at transformation should really be initiated by local people, and not outside researchers. Further, I wanted the work to have practical potential. I felt that by uncovering and presenting a fuller picture of the local setting and the work of lawyers, and examining ways to prepare graduates for that, the study was more likely to be of relevance to those interested in its practical application. I hope, however, that the case study also provides a useful foundation for those wishing to take a transformative or decolonising approach.

Finally, in writing up the research I was faced with many uncertainties regarding what should and should not be included. When faced with uncertainty and no clear answer I used the following questions as a guide: 'Would this have been useful for me, as a law teacher in the South Pacific, to have known?' and 'Would this have been useful for me, as an educator making decisions affecting local legal education, to have known?' I hope the work will be useful for others who find themselves in these roles, and those working in or with the legal sectors of Solomon Islands and Vanuatu more broadly. For

those involved in the LLB, the work could usefully be broadened by further research into the legal environments of other South Pacific jurisdictions, and what they need of their law graduates.

The curriculum and pedagogy of legal education offered in the South Pacific does need to be contextualised to better serve the local legal environment and community needs. This thesis has shown why this is no easy task. However, I hope that this work will stimulate productive discussions in the future, and in this way help improve the quality and reputation of legal education in Solomon Islands and Vanuatu, and the career-readiness of USP law graduates more broadly.

APPENDIX ONE: INTERVIEW QUESTIONS

1. Initial interview questions — lawyers

Part 1.

- g) Country of legal training?
- h) Country of current work?
- i) Employer (govt, NGO, Aid donor, private practice, university etc)?
- j) When did you begin working as a lawyer?
- k) What do you do in your work?

Part 2.

- a) What skills do you use most often in your work?
- b) Are you adequately equipped with those skills?
- c) Did you leave law school equipped with those skills?
- d) If not, where/how did you develop those skills?
- e) Do you need more skills in order to do your work effectively?
- f) Which skills do you need?
- g) Do you have opportunities to develop those skills?
- h) Where? How?

Part 3.

- a) What knowledge or areas of knowledge do you use most often in your work here?
- b) Are you adequately equipped with that knowledge?
- c) Did you leave law school equipped with that knowledge?
- d) If not, where/how did you get that knowledge?
- e) Do you need more knowledge in order to do your work effectively?
- f) What knowledge or areas of knowledge do you need?
- g) Do you have opportunities to develop that knowledge?
- h) Where? How?

Part 4.

- a) If you had to choose just one thing, what would you say is **the most important thing** for a lawyer in the South Pacific to know, to understand, or to be able to do?
- b) Do you think there are areas of **knowledge** which lawyers in the South Pacific would need which lawyers elsewhere would not need, or would not need to the same extent?
- c) If so, what are they?
- d) Do you think there are **skills or abilities** which lawyers in the South Pacific need which lawyers in other places would not need, or would not need to the same extent?
- e) If so, what are they?
- f) Do you think a law degree undertaken in **Australia or New Zealand** would equip a graduate for work as a lawyer anywhere in the South Pacific? Explain

Part 5.

The following are the USP School of Law Draft Learning Outcomes. On a scale of 1–5, with 1 being most important and 5 being least important, how would you rate the importance of the following for an LLB graduate?

USP School of Law Draft Learning Outcomes

Graduates of the USP LLB will display the following:

Knowledge

Graduates of the USP Bachelor of Laws will demonstrate an understanding of a coherent body of legal knowledge that is based upon the laws and legal systems of the South Pacific.

1 2 3 4 5

Communication skills

Graduates of the Bachelor of Laws will be able to communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences.

1 2 3 4 5

Professionalism & ethical behaviour

Graduates of the Bachelor of Laws will be able to independently manage their work in a manner which demonstrates understanding of the principles of professionalism and ethics.

1 2 3 4 5

Legal research and reasoning skills

Graduates of the Bachelor of Laws will be able to think independently, creatively and critically to identify and solve legal problems.

1 2 3 4 5

Ability to contribute to the development of South Pacific countries' laws and legal systems

Graduates of the Bachelor of Laws will be able to identify law reform issues in their country and in the South Pacific generally and be able to contribute to solutions.

1 2 3 4 5

Appendix One: Interview Questions

Would you add other outcomes, or change or delete any of the listed outcomes? If so, how?

Part 6.

Is there anything else you would like to add?

2. Initial Interview questions — non-lawyers

Part 1.

- a) Background country
- b) Country of current work
- c) Type of work
- d) Location (city, rural, village, etc)
- e) Employer/Organisation
(govt, NGO, Aid donor, private practice, university etc)
- f) Time working in South Pacific
- g) What is your/your organisation's involvement with law/lawyers?

Part 2.

- a) If you had to choose just one thing, what would you say is **the most important thing** for a lawyer in the South Pacific to know, to understand, or to be able to do?
- b) Do you think there are areas of **knowledge** needed by South Pacific lawyers which would not be needed elsewhere?
- c) If so, what are they?
- d) Do you think there are areas of **skill** needed by South Pacific lawyers which would not be needed elsewhere?
- e) If so, what are they?
- f) Do you think a law degree undertaken in the **South Pacific** would equip a graduate for work as a lawyer anywhere in the South Pacific?
- g) If you think some things are specific to individual nations, please give examples.
- h) Do you think a law degree undertaken in **Australia or New Zealand** would equip a graduate for work as a lawyer anywhere in the South Pacific?
- i) Do you notice a difference between local and ex pat lawyers? If so, what difference?
- j) Do you notice a difference between locally trained and overseas trained lawyers? If so, what difference?

Part 3.

The following are the USP School of Law Draft Learning Outcomes. On a scale of 1–5, with 1 being most important and 5 being least important, how would you rate the importance of the following for an LLB graduate?

USP School of Law Draft Learning Outcomes

Graduates of the USP LLB will display the following:

Knowledge

Graduates of the USP Bachelor of Laws will demonstrate an understanding of a coherent body of legal knowledge that is based upon the laws and legal systems of the South Pacific.

1 2 3 4 5

Communication skills

Graduates of the Bachelor of Laws will be able to communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences.

1 2 3 4 5

Professionalism & ethical behaviour

Graduates of the Bachelor of Laws will be able to independently manage their work in a manner which demonstrates understanding of the principles of professionalism and ethics.

1 2 3 4 5

Legal research and reasoning skills

Graduates of the Bachelor of Laws will be able to think independently, creatively and critically to identify and solve legal problems.

1 2 3 4 5

Ability to contribute to the development of South Pacific countries' laws and legal systems

Graduates of the Bachelor of Laws will be able to identify law reform issues in their country and in the South Pacific generally and be able to contribute to solutions.

1 2 3 4 5

Appendix One: Interview Questions

Would you add other outcomes, or change or delete any of the listed outcomes? If so, how?

Part 4.

Is there anything else you would like to add?

3. Initial supplementary questions for supervisors of lawyers

In relation to the people you supervise:

- a) What skills do they use most often in your work place?
- b) Are they adequately equipped with those skills?
- c) Did they leave law school equipped with those skills?
- d) If not, where/how did they develop those skills?
- e) Do they need more skills in order to do their work effectively?
- f) If so, which skills do they need?
- g) Do they have opportunities to develop those skills?
- h) Where? How?

In relation to the people you supervise:

- a) What knowledge or areas of knowledge do they use most often in their work here?
- b) Are they adequately equipped with that knowledge?
- c) Did they leave law school equipped with that knowledge?
- d) If not, where/how did they get that knowledge?
- e) Do they need more knowledge in order to do their work effectively?
- f) What knowledge do they need?
- g) Do they have opportunities to develop that knowledge?
- h) Where? How?

APPENDIX TWO: USP LLB PROGRAM OUTCOMES

SOL & USP Policies

LLB Programme outcomes (2015 Moodle Book Version)

Graduates of the USP LLB will display the following:

Knowledge

Graduates of the USP Bachelor of Laws will be able to demonstrate an understanding of a coherent body of legal knowledge that is based upon the laws and legal systems of the South Pacific in an international and comparative context.

Explanation

Students' competence in knowledge will be assessed in following areas:

1. Governance systems, dispute resolution mechanisms and law making structures within both South Pacific legal systems generally the student's own country
2. Underlying principles and concepts including the common law tradition, the doctrine of legal precedent and processes for making law
3. The fundamental areas of law as benchmarked against international standards;
4. The international and comparative contexts of law
5. The broader contexts, such as political, economic, social and cultural contexts, within which legal issues arise

Communication skills

Graduates of the Bachelor of Laws will be able to communicate orally and in writing in ways that are effective, appropriate and persuasive for legal and non-legal audiences.

Explanation

Students' competence in communication will be assessed in the following areas:

1. Accurate comprehension of written and oral communication
2. Letter writing
3. Advising clients
4. Legal opinion writing
5. Drafting legal documents including simple contracts and court documents
6. Oral advocacy, including mooting
7. Oral presentation, including seminar presentations
8. Academic writing, including case notes and research essays
9. Interviewing

Professionalism & ethical behaviour

Graduates of the Bachelor of Laws will be able to collaborate and independently manage their work in a manner which demonstrates understanding of the principles of professionalism and ethics.

Explanation

Students' competence in professionalism & ethical behaviour will be assessed in the following areas:

1. Independent management of work in an individual setting
2. Collaboration in group settings
3. Adherence to academic and professional conventions including conventions relating to dishonest practice, participation, due dates, respect for confidentiality and research ethics
4. Use of self reflection and external feedback as appropriate to support personal and professional development
5. Identification of issues of legal ethics
6. Development of appropriate responses to issues of legal ethics
7. Knowledge of legal professionalism including a lawyer's duties to the court, clients, colleagues and society in general

Legal research and reasoning skills

Graduates of the Bachelor of Laws will be able to undertake independent research and think originally and creatively in order to identify, analyse and solve legal problems.

Explanation

Students' competence in legal reasoning will be assessed in the following areas:

1. Issues identification, including factual, legal and policy issues
2. Legal research/source identification and location using a variety of hardcopy and online resources
3. Evaluation of applicability of legal sources
4. Application of sources to fact problem
5. Making a reasoned choice amongst alternatives
6. Justification of conclusion

Ability to contribute to the development of South Pacific countries' laws and legal systems

Graduates of the Bachelor of Laws will be able to identify law reform issues in their country and in the South Pacific generally and be able to contribute to solutions.

Explanation

Students' competence in contributing to the development of South Pacific countries' laws will be assessed in the following areas:

1. Awareness of how current social, economic, political and cultural issues affect legal development in student's own country and in the South Pacific generally
2. Awareness and appropriate utilisation of international best practice in the South Pacific context
3. Generation of a range of possible solutions to identified issues
4. Making a reasoned choice amongst alternative policy solutions/strategies
5. Research/source identification and location using a broad range of non-legal sources

BIBLIOGRAPHY

1. Books, Chapters, Articles and Reports

- Adzoxornu, Isaacus and the Editorial Committee, 'The Cook Islands' in Michael A Ntuny (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 3
- Ahmadu, Mohammed, 'Legal Research and Teaching in the South Pacific' (2004) 26(2) *Directions: Journal of Educational Studies* 53
- Alasia, Sam, 'Politics' in Hugh Laracy (ed), *Ples Blong lumi: Solomon Islands, the Past Four Thousand Years* (USP Institute of Pacific Studies, 1989) 137
- Alasia, Sam, 'Population Movement' in Hugh Laracy (ed), *Ples Blong lumi: Solomon Islands, the Past Four Thousand Years* (USP Institute of Pacific Studies, 1989) 112
- Allen, Matthew et al, *Justice Delivered Locally: Systems, Challenges and Innovations in Solomon Islands. July 2013 Research Report* (Justice for the Poor, 2013)
- Angelo, A H, 'Niue' in Michael A Ntuny (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 158
- Angelo, A H, 'Tokelau' in Michael A Ntuny (ed), *South Pacific Island Legal Systems* (University of Hawaii Press, 1993) 296
- Angelo, A H and J Goldring, 'The Study of Law at the University of the South Pacific' (1994) 24 *Victoria University of Wellington Law Review* 103
- Armstrong, Susan and Judith McNamara, 'Transition Pedagogy in First and Final Year Law Programs' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis Butterworths, 2011) 207
- Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (2000)
- Australian Universities Quality Agency (AUQA) and New Zealand Universities Academic Audit Unit (NZUAAU), 'Report of an Audit of the University of the South Pacific' (AUQA, 2008)
- Babbie, Earl, *The Practice of Social Research* (Thomson Wadsworth, 2007)
- Bandura, Albert, 'Behaviour Theory and the Models of Man' (1974) 29 *American Psychologist* 859
- Barton, G P, *Legal Resource Needs in Small States: Report on Some Pacific Jurisdictions* (Commonwealth Secretariat, London, 1980), reprinted in (1999) 30 *Victoria University of Wellington Law Review* 599
- Bennett, Judy et al (eds), 'Pacific Research Protocols from the University of Otago' (2013) 25(1) *The Contemporary Pacific* 95
- Berg, Bruce L and Howard Lune, *Qualitative Research Methods for the Social Sciences* (Pearson, 8th ed, 2012)

Bibliography

- Bhattacharya, Kakali and Seungyeon Han, 'Piaget and Cognitive Development' in Michael Orey (ed), *Emerging Perspectives on Learning, Teaching, and Technology* (Department of Educational Psychology and Instructional Technology, University of Georgia, 2001) <http://epltt.coe.uga.edu/index.php?title=Piaget%27s_Constructivism>
- Biggs, J B, 'Teaching for Better Learning' (1990) 2 *Legal Education Review* 133
- Biggs, John and Catherine Tang, *Teaching for Quality Learning at University: What the Student Does* (McGraw Hill, 4th ed, 2011)
- Bilimoria, Niles, 'Choices for the South Pacific Region's Bar Associations and Law Societies?' in Petra Butler and Caroline Morris (eds), *Small States in a Legal World* (Springer, 2017) 245
- Blaxell, Michael, 'Reflections on the Operation and Direction of the USP Community Legal Centre, Port Vila' (2014) 2014 *Journal of South Pacific Law* A-1 <<https://www.usp.ac.fj/index.php?id=19537>>
- Boon, Andrew and Julian Webb, 'Legal Education and Training in England and Wales: Back to the Future?' (2008) 58(1) *Journal of Legal Education* 79
- Brown, Catherine, Judith McNamara and Cheryl Treloar, *Good Practice Guide: Statutory Interpretation* (Australian Learning and Teaching Council, 2011)
- Brown, Kenneth, *Reconciling Customary Law and Received Law in Melanesia: The Post-Independence Experience in Solomon Islands and Vanuatu* (Charles Darwin University Press, 2005)
- Brown, Patricia Anne, 'A Review of the Literature on Case Study Research' (2008) 1(1) *Canadian Journal for New Scholars in Education* 1
- Burns, Marcelle, 'Towards Growing Indigenous Culturally Competent Legal Professionals in Australia' (2013) 12(1) *International Education Journal, Comparative Perspectives* 226
- Campbell, Anne, *Developing Graduate Attributes; Politics, Process and Assessment* (VDM Verlag Dr Muller, 2008)
- Campbell, I C, 'Constructing General Histories' in Brij V Lal (ed), *Pacific Island Histories: Journeys and Transformations* (Journal of Pacific History, 1992) 46
- Campbell, I C, *Worlds Apart: A History of the Pacific Islands* (Canterbury University Press, 2nd ed, 2011)
- Cappa, Clare, *Good Practice Guide: Research Skills* (Australian Learning and Teaching Council, 2012)
- Cartledge, R B, 'Thrown in at the Deep End' (2011) Issue 3 (October–December) South Pacific Lawyers Association *newSPLash* 6 <https://docs.wixstatic.com/ugd/0217f9_8b9ed8f97907487ab0535c89320a7286.pdf>
- Chilisa, Bagele, *Indigenous Research Methodologies* (Sage, 2012)
- Christensen, Sharon and Sally Kift, 'Graduate Attributes and Legal Skills: Integration or Disintegration?' (2000) 11(2) *Legal Education Review* 207

Bibliography

- Committee on Legal Education for Students from Africa (UK), *Report of the Committee on Legal Education for Students from Africa 1960*, Cmnd 1255 (1961) 5
- Committee on Legal Education in the Developing Countries, *Legal Education in a Changing World* (International Legal Center and Scandinavian Institute of African Studies, 1975).
- Corrin, Jennifer, 'Accommodating Legal Pluralism in Pacific Courts: Problems of Proof of Customary Law,' (2011) 15 *International Journal of Evidence and Proof* 1
- Corrin Care, Jennifer (ed), *Sources of Law in the South Pacific Region. Journal of Pacific Studies, Volume 21* (The University of the South Pacific, 1997)
- Corrin Care, Jennifer, 'Bedrock and Steel Blues: Finding the Law Applicable in Vanuatu' (1998) 24 *Commonwealth Law Bulletin* 594
- Corrin Care, Jennifer, 'Colonial Legacies? A Study of Received and Adopted Legislation Applying in the University of the South Pacific Region' (1997) 21 *Journal of Pacific Studies* 33
- Corrin Care, Jennifer, 'Customary Law and Women's Rights in Solomon Islands' (2000) No 51 *Development Bulletin* 20
- Corrin Care, Jennifer, 'Wisdom and Worthy Customs: Customary Law in the South Pacific' (2002) 80 *Australian Law Reform Commission Reform Journal* 31
- Corrin Care, Jennifer, 'Finding the Right Balance in Plural Legal Systems: Training Lawyers in the South Pacific' (2006) 4(2) *Journal of Commonwealth Law and Legal Education* 171
- Corrin Care, Jennifer and Jean G Zorn, 'Legislating for the Application of Customary Law in Solomon Islands' (2005) 34 *Common Law World Review* 144
- Corrin Care, Jennifer and Susan Farran, 'Law in the Pacific: Implications of Jurisdictional, Cultural and Ethnic Diversity for the Teaching of Law' (1997) 31(3) *The Law Teacher* 283
- Corrin Care, Jennifer, Tess Newton Cain and Don Paterson, *Introduction to South Pacific Law* (Cavendish Publishing, 1999)
- Corrin, Jennifer and Don Paterson, *Introduction to South Pacific Law* (Routledge-Cavendish, 2nd ed, 2007)
- Corrin, Jennifer and Don Paterson, *Introduction to South Pacific Law* (Palgrave Macmillan, 3rd ed, 2011)
- Corrin, Jennifer and Don Paterson, *Introduction to South Pacific Law* (Intersentia, 4th ed, 2017)
- Creswell, John W, *Research Design: Qualitative, Quantitative and Mixed Methods Approaches* (Sage, 3rd ed, 2009)
- Creswell, John, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (Sage, 3rd ed, 2013)
- Crocombe, Ron and Esau Tuza (eds), *Independence, Dependence, Interdependence: The First Ten Years of Solomon Islands Independence* (Institute of Pacific Studies, the USP Honiara Centre, and Solomon Islands College of Higher Education, 1992)
- Daukšaitė, Aurelia, 'Is One Semester of Legal English Enough?' (2013) 22 *Studies about Languages* 124

Bibliography

- Deklin, Tony, 'Nauru' in Michael A Ntuny (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 142
- Denoon, Donald, Philippa Mein Smith and Marivic Wyndham, *A History of Australia, New Zealand and the Pacific* (Blackwell Publishing, 2000)
- Denzin, Norman and Yvonna Lincoln, *Collecting and Interpreting Qualitative materials* (Sage Publications, 3rd ed, 2008)
- Denzin, Norman and Yvonna Lincoln, 'Introduction: The Discipline and Practice of Qualitative Research' in Norman Denzin and Yvonna Lincoln (eds), *The SAGE Handbook of Qualitative Research* (Sage, 3rd ed, 2008) 1
- Denzin, Norman and Yvonna Lincoln, 'Introduction: The Discipline and Practice of Qualitative Research' in Norman Denzin and Yvonna Lincoln (eds), *The SAGE Handbook of Qualitative Research* (Sage, 4th ed, 2011) 1
- Denzin, Norman, Yvonna Lincoln and Linda Tuhiwai Smith (eds), *Handbook of Critical and Indigenous Methodologies* (Sage, 2008)
- Dewey, John, *Experience and Education* (1938, republished by Touchstone New York, 1997)
- Dinnen, Sinclair, Anita Jowitt and Tess Newton (eds), *A Kind of Mending: Restorative Justice in the Pacific Islands* (ANU EPress, 2010)
- Dinnen, Sinclair, Doug Porter and Caroline Sage, 2010. *Conflict in Melanesia: Themes and Lessons* (Justice for the Poor, 2011)
- Douglas, Bronwen, 'Rank, Power, Authority: A Reassessment of Traditional Leadership in South Pacific Societies' (1979) 14(1) *Journal of Pacific History* 2
- Eades, Diana, *Aboriginal Ways of Using English* (Aboriginal Studies Press, 2013)
- Evans, Daniel, Michael Goddard and Don Paterson, 'The Hybrid Courts of Melanesia: A Comparative Analysis of Village Courts of Papua New Guinea, Island Courts of Vanuatu, and Local Courts of Solomon Islands' (Justice and Development Working Paper Series No 13, The World Bank, 2011)
- Evers, Maxine, Leanne Houston and Paul Redmond, *Good Practice Guide: Ethics and Professional Responsibility (Threshold Learning Outcome 2)* (Australian Learning and Teaching Council, 2011)
- Fallows, Stephen and Christine Steven, *Integrating Key Skills in Higher Education* (Kogan Page, 2000)
- Faerua, Arthur, 'The Teaching and Learning of Legal Writing Skills: Observations from Emalus' (2004) 26(2) *Directions: Journal of Educational Studies* 41
- Farran, Sue, 'Playing Games in the Classroom' (2003) 12(1&2) *Pacific Curriculum Network* 21
- Finnegan, Ruth, 'Introduction; or, Why the Comparativist Should Take Account of the South Pacific Oral Tradition' (1990) 5(2-3) *Oral Tradition* 159
- Fisher, Sophie, 'Solomon Islands Social Welfare Needs Analysis' (Research Paper, International Social Service Australia, 2012) <<http://www.iss.org.au/wp-content/uploads/2012/06/Solomon-Islands-FINAL-Full-Doc.pdf>>

Bibliography

- Foanaota, Lawrence, 'Social Change' in Hugh Laracy (ed), *Ples Blong lumi: Solomon Islands, the Past Four Thousand Years* (USP Institute of Pacific Studies, 1989)
- Forsyth, Miranda, 'Beyond Case Law: *Kastom* and Courts in Vanuatu' (2004) 35 *Victoria University of Wellington Law Review* 427
- Forsyth, Miranda, 'Leadership Structures and Dispute Management Systems in Vanuatu from First Contact to Independence' (2007) 30 *Journal of Pacific Studies* 63
- Forsyth, Miranda, *A Bird that Flies with Two Wings: Kastom and State Justice Systems in Vanuatu* (ANU EPress, 2009)
- Forsyth, Miranda, 'Spinning a Conflict Management Web in Vanuatu: Creating and Strengthening Links between State and Non-State Legal Institutions' (2011) 43(63) *Journal of Legal Pluralism* 177
- Forsyth, Miranda and Blayne Haggart, 'The False Friends Problem for Foreign Norm Transplantation in Developing Countries' (2014) 6 *Hague Journal on the Rule of Law* 202
- Foukona, Joseph D, 'State Powers and Institutions in Solomon Islands' *Developing Democracy* (2002) No 60 *Development Bulletin* 50
<<https://crawford.anu.edu.au/rmap/devnet/devnet/db-60.pdf>>
- Foukona, Joseph D, 'Democracy and Development through the Electoral System in Solomon Islands: Social and Economic Impacts' (2006) No 70 *Development Bulletin* 109
<<https://crawford.anu.edu.au/rmap/devnet/devnet/db-70.pdf>>
- Gallant, Tricia Bertram (ed), *Creating the Ethical Academy: A Systems Approach to Understanding Misconduct and Empowering Change in Higher Education* (Routledge, 2011)
- Gerring, John, 'What is a Case Study and What is it Good For?' (2004) 98(2) *American Political Science Review* 341
- Ghai, Yash, 'Constitution Making and Decolonisation' in Yash Ghai (ed), *Law, Politics and Government in the Pacific Island States* (USP Institute of Pacific Studies, 1988) 1
- Ghai, Yash, 'Systems of Government I' in Yash Ghai (ed), *Law, Politics and Government in the Pacific Island States* (USP Institute of Pacific Studies, 1988) 54
- Golson, Jack, 'Prehistoric Movement and Mapping' in R J May and Hank Nelson (eds), *Melanesia, Beyond Diversity* (Research School of Pacific Studies, Australian National University, 1982) Vol 1, 17
- Grimes, R, 'Legal Education in the South Pacific — Producing Tomorrow's Lawyers' (Discussion paper, USP Pacific Law Department, 1995)
- Grimes, Richard, 'Identifying and Satisfying Needs for Continuing Legal Education in the South Pacific' (1995) 13(2) *Journal of Professional Legal Education* 199
- Grimes, Richard, 'Culture, Custom and the Clinic — A Model for Legal Education in the South Pacific' (1998) 24(1) *Monash University Law Review* 38.

Bibliography

- Grimes, Richard, 'Learning and Practising Law in the South Pacific — The Ethical Dimension' in Kim Economides (ed), *Ethical Challenges to Legal Education and Conduct* (Hart, Oxford, 1998) 187
- Guiart, Jean, 'Land Tenure and Hierarchies in Eastern Melanesia' (1996) 9(1) *Pacific Studies* 1
- Hager, Paul and Susan Holland (eds), *Graduate Attributes, Learning and Employability* (Springer, 2006)
- Handsley, Elizabeth, *Good Practice Guide: Collaboration Skills (Threshold Learning Outcome 5)* (Australian Learning and Teaching Council, 2011)
- Heath, Mary, 'Assessment Strategies' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis Butterworths, 2011) 269
- Hempenstall, Peter, 'My Place: Finding a Voice within Pacific Colonial Studies' in Brij V Lal (ed), *Pacific Island Histories: Journeys and Transformations* (Journal of Pacific History, 1992) 60
- Henderson, John, 'Governance and Constitutional Issues: Reflections on Current Problems and Future Options' in Michael Powles (ed), *Pacific Futures* (Pandanus Books, 2006) 10
- Hill, Edward, 'The USP Community Legal Centre: Combining Legal Education and Legal Services in a Developing Island Country (Working Paper)' (2004) 8(1) *Journal of South Pacific Law* <<https://www.usp.ac.fj/index.php?id=13270>>
- Holdsworth, W S, 'Sir William Blackstone' (1928) 7(1) *Oregon Law Review*, 157
- Huffer, Elise, 'Governance, Corruption, and Ethics in the Pacific' (2005) 17(1) *The Contemporary Pacific* 118
- Huggins, Anna, 'Incremental and Inevitable: Contextualising the Threshold Learning Outcomes for Law' (2015) 38(1) *UNSW Law Journal* 264
- Hyett, Nerida, Amanda Kenny and Virginia Dickson-Swift, 'Methodology or Method? A Critical Review of Qualitative Case Study Reports' (2014) 9 *International Journal of Qualitative Studies in Health and Well-being* 23606 <<http://dx.doi.org/10.3402/qhw.v9.23606>>
- ICT Data and Statistics Division, Telecommunication Development Bureau, International Telecommunication Union, *Measuring the Information Society Report 2015* (International Telecommunication Union, 2015) <<http://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2015/MISR2015-w5.pdf>>
- Ipo, John, 'Land and Economy' in Hugh Laracy (ed), *Ples Blong lumi: Solomon Islands, the Past Four Thousand Years* (USP Institute of Pacific Studies, 1989) 121
- James, Nick, *Good Practice Guide: Thinking Skills (Threshold Learning Outcome 3)* (Australian Learning and Teaching Council, 2011)
- Johnstone, Richard, 'Whole of Curriculum Design in Law' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis Butterworths, 2011) 1
- Johnstone, Richard and Sumitra Vignaendra, 'Learning Outcomes and Curriculum Development in Law' (Report, Australian Universities Teaching Committee, January 2003) <http://www.cald.asn.au/docs/AUTC_2003_Johnstone-Vignaendra.pdf>

Bibliography

- Jones, Carwyn, 'Indigenous Legal Issues, Indigenous Perspectives and Indigenous Law in the New Zealand LLB Curriculum' (2009) 19(2) *Legal Education Review* 257
- Jowitt, Anita, 'The Nature and Functioning of Pacific Legal Systems' (2009) 13(1) *Journal of South Pacific Law* 1
- Jowitt, Anita and Tess Newton (eds), *Passage of Change: Law, Society and Governance in the Pacific* (ANU EPress, 2010)
- Julien, M T I, 'Why a Law Faculty in the West Indies?' (1972) 3(2) *International Bar Journal* 25
- Kaburise, J B K, 'Access to Legal Education in Papua New Guinea' (1987) 3(3) *QUT Law Journal* 163
- Kahn-Fogel, Nicholas A, 'The Troubling Shortage of African Lawyers' (2012) 33(3) *Journal of International Law* 719
- Kam, Linda et al, 'Get Real! A Case Study of Authentic Learning Activities in Legal Education' (2012) 19(2) *Murdoch University Law Review* 17
- Keesing, Roger M, 'Definitions of People and Place' in R J May and Hank Nelson (eds), *Melanesia, Beyond Diversity* (Research School of Pacific Studies, ANU Canberra, 1982) Vol 1, 3
- Keesing, Roger M, 'Traditional Enclaves in Melanesia' in R J May and Hank Nelson (eds), *Melanesia, Beyond Diversity* (Research School of Pacific Studies, Australian National University, 1982) Vol 1, 39
- Kift, Sally et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis Butterworths, 2011)
- Kift, Sally, '21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18(1&2) *Legal Education Review* 1
- Kift, Sally, 'Articulating a Transition Pedagogy to Scaffold and to Enhance the First Year Student Learning Experience in Australian Higher Education' (Final Report for ALTC Senior Fellowship Program, QUT, 2009)
- Kift, Sally, Mark Israel and Rachael Field, 'Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching Academic Standards Statement' (Australian Learning and Teaching Council, 2010)
- Kowalski, Tonya, 'True North: Navigating for the Transfer of Learning in Legal Education' (2010) 34(1) *Seattle University Law Review* 51
- Kuautonga, Elizabeth Tito, 'Experiences as a Young Lawyer in the Pacific: Discussions at the Pacific Young Lawyers' Forum' (2011) Issue 2 (July–September) *South Pacific Lawyers Association newSPLash* 6
<<http://www.southpacificlawyers.org/files/uploads/newSPLash%20Issue%202.pdf>>
- Laracy, Hugh (ed), *Ples Blong lumi: Solomon Islands, the Past Four Thousand Years* (USP Institute of Pacific studies, 1989)
- Larmour, Peter (ed), *Solomon Islands Politics* (USP Institute of Pacific Studies, 1983)

Bibliography

- Larmour, Peter, 'Culture and Corruption in the Pacific Islands: Some Conceptual Issues and Findings from Studies of National Integrity Systems' (Discussion Paper, Asia Pacific School of Economics and Government, Australian National University, 2006)
- Larmour, Peter, *Interpreting Corruption: Culture and Politics in the Pacific Islands* (University of Hawaii Press, 2012)
- Laurens, Julian, Alex Steel and Anna Huggins, 'Works Well With Others: Examining the Different Types of Small Group Learning Approaches and Their Implications for Law Student Learning Outcomes' (2013) 6 *Journal of the Australasian Law Teachers Association* 123
- Lawson, Stephanie, 'The Tyranny of Tradition: Critical Reflections on Nationalist Narratives in the South Pacific' in Tom Otto and Nicholas Thomas (eds), *Narratives of Nation in the South Pacific* (Harwood Academic Publishers, 1997)
- Laycock, D C, 'Melanesian Linguistic Diversity: A Melanesian Choice?' in R J May and Hank Nelson (eds), *Melanesia, Beyond Diversity* (Research School of Pacific Studies, Australian National University, 1982) Vol 1, 34
- Lazarus-Black, Mindie, 'After Empire: Training Lawyers as a Postcolonial Enterprise' (2008) 25 *Small Axe* (Duke University Press) 38
- Lea, David, *Melanesian Land Tenure in a Contemporary and Philosophical Context* (University Press of America, 1997)
- Le Brun, Marlene and Richard Johnstone, *The Quiet Revolution: Improving student Learning in Law* (Law Book Co Ltd 1994)
- Lima, Ronna L, 'Educational Ideas of the Noole (Solomon Islands)' in Konai Helu Thaman (ed), *Educational Ideas from Oceania* (Institute of Education in association with the UNESCO Chair of Teacher Education and Culture, the University of the South Pacific, 2003) 124
- Lotherington, Heather, 'Trends and Tensions in Post-Colonial Language Education in the South Pacific' (1998) 1 *International Journal of Bilingual Education and Bilingualism* 65
- Lysaght, Pamela and Cristina D Lockwood, 'Writing-Across-the-Law-School Curriculum: Theoretical Justifications, Curricular Implications' (2004) 2 *Journal of the Association of Legal Writing Directors* 75
- MacFarlane, Peter, 'The Importance of Ethics and the Application of Ethical Principles to the Legal Profession [Working Paper]' (2002) 6(2) *Journal of South Pacific Law* <<http://www.paclii.org/journals/fJSPL/vol06/8.shtml>>
- MacFarlane, Peter, 'The Teaching of Legal Ethics at the Undergraduate Level, [Working Paper]' (2002) 6(2) *Journal of South Pacific Law* <<http://www.paclii.org/journals/fJSPL/vol06/>>
- MacFarlane, Peter, 'Book Review of Ethics Professional Responsibility and the Lawyer by Duncan Webb' (2003) 7(1) *Journal of South Pacific Law* <<https://www.usp.ac.fj/index.php?id=13246>>
- MacFarlane, Peter, 'The Application of Custom in South Pacific Contract Law and as a Basis for an Estoppel' (2004) 20(1) *Journal of Contract Law* 35
- MacFarlane, Peter and Chaitanya Lakshman, 'Law Reform in the South Pacific' (2005) 9(1) *Journal of South Pacific Law* <<https://www.usp.ac.fj/index.php?id=13295>>

Bibliography

- Maharg, Paul, 'Assessing Legal Professionalism in Simulations: The Case of SIMPLE' in A Cerillo and A M Delgado (eds), *Barcelona La Innovacion en La Docencia del Derecho a Traves del USO de las TIC* (Universitat Oberta de Catalunya, 2012)
<<http://works.bepress.com/paul-maharg/27/>>
- Maharg, Paul, *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-First Century*, (Routledge, 2007)
- Manteaw, Samuel O, 'Legal Education in Africa: What Type of Lawyer Does Africa Need?' (2008) 39 *McGeorge Law Review* 903
- Martin, Linda, 'From Apprenticeship to Law School: A Social History of Legal Education in Nineteenth Century New South Wales' (1986) 9 *University of New South Wales Law Journal* 111
- Marychurch, Judith, *Good Practice Guide: Self-Management (Threshold Learning Outcome 6)* (Australian Learning and Teaching Council, 2011)
- Matsuda, Matt K, *Pacific Worlds: A History of Seas, Peoples, and Cultures* (Cambridge University Press, 2012)
- Matthewson, Clare and Konai Helu Thaman, 'Designing the Rebbelib: Staff Development in a Pacific Multicultural Environment' in Colin Latchem and Frank Lockwood (eds), *Staff Development in Open and Flexible Learning* (Routledge, 2nd ed, 2005) 112
- May, Diane, 'Using Scaffolding to Improve Student Learning in Legal Environment Courses' (2014) 31(2) *Journal of Legal Studies Education* 233
- McGovern, James, 'Review of Vanuatu Policing and Justice Support Program' (Report Prepared for Department of Foreign Affairs and Trade, April 2016)
- McInnis, Craig and Simon Marginson, *Australian Law Schools after the 1987 Pearce Report* (Australian Government Publishing Service, 1994)
- McNamara, Judith, Tina Cockburn and Catherine Campbell, *Reflective Practice* (Australian Learning and Teaching Council, 2013)
- McShane, Michael, *Good Practice Guide: Appropriate Responses to Legal Issues: ADR* (Australian Learning and Teaching Council, 2013)
- McTaggart, Robin and Gina Curró, 'Book Language as a Foreign Language — ESL Strategies for Indigenous Learners' (Report of research commissioned by the Queensland College of Teachers, 2009)
- Menard, Helen, 'The Online Experience — The Students' Perspective' (2004) 26(2) *Directions: Journal of Educational Studies* 27
- Merriam, Sharan, 'Case Studies as Qualitative Research' in Clifton F Conrad, Jennifer Grant Haworth and Lisa R Lattuca (eds), *Qualitative Research Design in Higher Education: Expanding Perspectives* (Pearson, 2nd ed, 2001) 27
- Merriam, Sharan B, *Qualitative Research: A Guide to Design and Implementation* (Jossey-Bass, 3rd ed, 2009)
- Merriam, Sharan B and Elizabeth J Tisdell, *Qualitative Research: A Guide to Design and Implementation* (Jossey-Bass, 4th ed, 2016)

Bibliography

- Ministry of Justice, Solomon Islands, *Review of Legal Profession Regulations in the Solomon Islands — Scoping Study Report* (Law Council of Australia, 7 November 2011) <[https://www.academia.edu/16318102/Review of Legal Profession Regulations in the Solomon Islands - Scoping Study Report](https://www.academia.edu/16318102/Review_of_Legal_Profession_Regulations_in_the_Solomon_Islands_-_Scoping_Study_Report)>
- Mogish, Pauline, 'Rights and Procedures of Admission in South Pacific Countries' (2013) 2013 *Journal of South Pacific Law* CP-3 <<https://www.usp.ac.fj/index.php?id=18254>>
- Monson, Rebecca, 'Participatory Research on Land Issues in Solomon Islands' (April 2010) Issues 1.2 and 2.1 *eJournal of the Australian Association for the Advancement of Pacific Studies* <<http://intersections.anu.edu.au/pacificcurrents/monson.htm>>
- Moore, Clive, *Solomon Islands Historical Encyclopaedia 1893–1978*, (University of Queensland, 2nd ed, 2016) <<http://www.solomonencyclopaedia.net/index.html>>
- Mugler, France and John Lynch, 'Language and Education in the Pacific' in France Mugler and John Lynch (eds), *Pacific Languages in Education* (Institute of Pacific Studies, 1996) 1
- Nanau, Gordon Leua, 'The Wantok System as a Socio-Economic and Political Network in Melanesia' (2011) 2(1) *OMNES: The Journal of Multicultural Society* 31
- Nanau, Gordon Leua, 'Political Reviews, Melanesia, The Solomon Islands' (2015) 27(2) *The Contemporary Pacific* 528
- Narokobi, Bernard, *The Melanesian Way* (Institute of Papua New Guinea Studies and Institute of Pacific Studies (Suva), revised ed, 1983)
- Narokobi, Bernard, *Lo Bilong Yumi Yet: Law and Custom in Melanesia* (Melanesian Institute for Pastoral and Socio-Economic Service and the University of the South Pacific, 1989)
- Nash, Roy, 'Educational Inequality: The Special Case of Pacific Students' (2000) 15 *Social Policy Journal of New Zealand* 69
- Bills and Legislation Committee, National Parliament of Solomon Islands, *Report on the Political Parties Integrity Bill 2013*, National Parliamentary Paper No 20 September 2013
- Nonggorr, John, 'Solomon Islands' in Michael A Ntunmy (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 268
- Ntunmy, Michael A (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993)
- Olowu, 'Dejo, 'Human Rights Law in a Multicultural Regional University: A Reflective Experience in Pedagogy' (2004) 26(2) *Directions: Journal of Educational Studies* 13
- Ottley, Bruce, 'Developing Legal Education in a Developing Country: A Case Study of Papua New Guinea' (1981–1982) 31 *Journal of Legal Education* 183
- Pacific Islands Forum, *The Framework for Pacific Regionalism* (Pacific Islands Forum Secretariat, 2014)
- Pakoa, Fiona, 'Melanesian Students Negotiating their Identities to Succeed in Higher Education' in *Conference Proceedings of the 16th ISANA International Education Conference, 29 November – 2 December 2005* (International Education Association, 2005) 1 <[http://isana.proceedings.com.au/docs/2005/papers%20\(pdf\)/thur_1515_pakoa.pdf](http://isana.proceedings.com.au/docs/2005/papers%20(pdf)/thur_1515_pakoa.pdf)>

Bibliography

- Paterson, Don, 'Vanuatu' in Michael A Ntumu (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 265
- Paterson, Don, 'The Application of the Common Law and Equity in Countries of the South Pacific' (1997) 21 *Journal of Pacific Studies* 1
- Paterson, Don, 'Ron Crocombe's Contribution to the Promotion of Law at the University of the South Pacific' in Linda Crowl, Marjorie Tuainekore Crocombe and Roderick Dixon (eds), *Ron Crocombe: E Toa! Pacific Writings to Celebrate His Life and Work* (USP Press, 2013) 167
- Paterson, Don and Stephen A Zorn, 'Fiji' in Michael A Ntumu (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 26
- Pearce, Dennis, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Australian Government Publishing Service, 1987) ('Pearce Report')
- Powles, C Guy, 'Learning Whose Law? Legal Education in Plural Societies. Choices for the Pacific Island Region' in Commission on Folk Law and Legal Pluralism, *Papers presented to the Congress at Victoria University of Wellington, August 1992* (Law Faculty, Victoria University of Wellington, 1992) 256
- Powles, C Guy, 'Tonga' in Michael A Ntumu (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 315
- Powles, C Guy, 'Western Samoa' in Michael A Ntumu (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 395
- Powles, Guy, 'Legal Education and Information' (1984) 12(1) *Pacific Perspective* 17
- Powles, Guy, 'Law, Courts and Legal Services in Pacific Societies' in Guy Powles and Mere Pulea (eds), *Pacific Courts and Legal Systems* (USP Institute of Pacific Studies, 1988) 6
- Powles, Guy, 'Common Law at Bay? The scope and Status of Customary Law Regimes in the Pacific' (1997) 21 *Journal of Pacific Studies* 61
- Prest, Wilfrid, 'Legal History in Australian Law Schools' (2006) 27 *Adelaide Law Review* 267
- Punch, Keith F, *Introduction to Research Methods in Education* (Sage, 2009) 123
- Redman-MacLaren, Michelle L et al, 'Co-Interviewing Across Gender and Culture: Expanding Qualitative Research Methods in Melanesia' (2014) 14 *BMC Public Health* 922
- Reganvanu, Ralph, 'Afterword: Vanuatu Perspectives on Research' (1999) 70 *Oceania* 98
- Reganvanu, Ralph, 'The Traditional Economy as Source of Resilience in Vanuatu' (Paper presented at the Lowy Institute Conference 'The Pacific Islands and the World: The Global Economic Crisis', 3 August 2009), edited and republished at <http://milda.aidwatch.org.au/sites/default/files/Ralph%20Reganvanu.%20Traditional%20economy%20as%20a%20source%20of%20resistance%20in%20Vanuatu.pdf>
- Ricketts, Aidan, 'Threshold Concepts in Legal Education' (2004) 26(2) *Directions: Journal of Educational Studies* 2

Bibliography

- Ricketts, Aidan, 'Teaching Constitutional Law to Fiji Students: The Separation of Powers and the Rule of What?' (2009) 2(1&2) *Journal of the Australasian Law Teachers Association* 207
- Scarr, Deryck, *A History of the Pacific Islands: Passages through Tropical Time* (Taylor and Francis, 2001)
- Silverman, Sarah Kozel, 'Cultural Deficit Perspective' in Sam Goldstein and Jack A Naglieri (eds), *Encyclopedia of Child Behavior and Development* (Springer-Verlag, 2010) 446
- Singo, A G, 'Vernacular Educational Ideas from Pentacost, Vanuatu' in Konai Helu Thaman (ed), *Educational Ideas from Oceania* (Institute of Education in association with the UNESCO Chair of Teacher Education and Culture, the University of the South Pacific, 2003) 129
- Smith, Linda Tuhiwai, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed Books, 2nd ed, 2012)
- Solomon Islands Truth and Reconciliation Commission, 'Confronting the Truth for a Better Solomon Islands' (Final Report, February 2012)
- South Pacific Lawyers' Association (SPLA), *Needs Evaluation Survey for South Pacific Lawyer Associations (Final Report)* (October 2011) 14
<<https://www.southpacificlawyers.org/research>>
- Stake, R E, 'Case Studies' in N K Denzin and Y S Lincoln (eds), *Handbook of Qualitative Research* (Sage, 2nd ed, 2000) 435
- Stake, Robert, *The Art of Case Study Research* (Sage, 1995)
- Stake, Robert, 'Case Studies' in Norman Denzin and Yvonna Lincoln (eds), *Strategies of Qualitative Inquiry Vol. 2* (Sage, 2011) 86
- Stake, Robert E, 'The Case Study Method in Social Inquiry' (1978) 7(2) *Educational Researcher* 5
- Steel, Alex, *Good Practice Guide: Law in Broader Contexts* (Australian Learning and Teaching Council, 2013)
- Steel, Alex, Julian Laurens and Anna Huggins, 'Class Participation as a Learning and Assessment Strategy in Law: Facilitating Students' Engagement, Skill Development and Deep Learning' (2013) 36(1) *UNSW Law Journal* 30
- Stuckey, Roy et al, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association, 2007)
- Sullivan, William M et al, *Educating Lawyers: Preparation for the Profession of Law* (Jossey Bass, 2007)
- Tamanaha, Brian Z, Caroline Sage and Michael Woolcock (eds), *Legal Pluralism and Development: Scholars and Practitioners in Dialogue* (Cambridge University Press 2012)
- Taufe'ulungaki, 'Ana Maui, 'Vernacular Languages and Classroom Interactions in the Pacific' in Konai Helu Thaman (ed), *Educational Ideas from Oceania* (Institute of Education in association with the UNESCO Chair of Teacher Education and Culture, the University of the South Pacific, 2003) 20

Bibliography

- Taufe'ulungaki, 'Ana, 'Language and Culture in the Pacific Region: Issues, Practices, and Alternatives' (2005) 27(1) *Directions: Journal of Educational Studies* 12
- Taylor, L, 'Final Report and Recommendations for the Professional Diploma in Legal Practice (PDLP), Faculty of Law, University of the South Pacific (USP), Suva Campus' (Prepared for Professor Eric Colvin, Head, School of Law, University of the South Pacific, 19 July 2012)
- Teaiwa, Teresia and Malakai Koloamatangi, 'Democracy and its Prospects in the Pacific' in Michael Powles (ed), *Pacific Futures* (Pandanus Books, 2006) 20
- Thaman, Konai Helu, 'Hints for Teachers at the University of the South Pacific: (Multi) Cultural Sensitivity' (1996) 5(2) *Pacific Curriculum Network* 6
<<http://www.directions.usp.ac.fj/collect/direct/index/assoc/D1065015.dir/doc.pdf>>
- Thaman, Konai Helu, 'Towards Culturally Inclusive Teacher Education with Specific Reference to Oceania' (2001) 2(5) *International Education Journal* 1
<<https://ehlt.flinders.edu.au/education/iej/articles/v2n5/1Thaman/paper.pdf>>
- Thaman, Konai Helu, 'Towards Cultural Democracy in Teaching and Learning with Specific References to Pacific Island Nations (PINS)' (2009) 3(2) *International Journal for the Scholarship of Teaching and Learning* art 6, 2
- Thomas, David R, 'A General Inductive Approach for Analyzing Qualitative Evaluation Data' (2006) 27 *American Journal of Evaluation* 238
- Thompson, John A and Roy G Bauer, 'Factors Affecting the Academic Success of Pacific Island International Students' (1994) 21(2) *Educational Research and Perspectives* 38
- Thompson, Sandy et al, *Training Manual for Teaching Working with Pacific Islanders* (Aotearoa National Centre for Tertiary Teaching Excellence, 2009)
- Tight, Malcolm, 'The Curious Case of Case Study: A Viewpoint' (2010) 13(4) *International Journal of Social Research Methodology* 329
- Tomoana, Ria, *Sharing Successful Teaching and Learning Strategies for Māori, Pacific, and Youth Learners: The Whitireia Way* (Whitireia, Ako Aeterea Publication, 2012)
<<https://ako.aotearoa.ac.nz/ako-hub/ako-aotearoa-central-hub/resources/pages/strategies-maori-pacific-and-youth-learners>>
- Tonkinson, Robert, 'Vanuatu Values: A Changing Symbiosis' in R J May and Hank Nelson (eds), *Melanesia, Beyond Diversity* (Research School of Pacific Studies, Australian National University, 1982) Vol 1, 73
- Tremblay, Karine, Diane Lalancette and Deborah Roseveare, *Assessment of Higher Education Learning Outcomes Feasibility Study Report Volume 1 — Design and Implementation* (OECD, 2012) 35
- Tryon, D T, 'The Solomon Islands and Vanuatu: Varying Responses to Diversity' in R J May and Hank Nelson (eds), *Melanesia, Beyond Diversity* (Research School of Pacific Studies, Australian National University, 1982) Vol 1, 273
- Tryon, Dale, 'Ni-Vanuatu Research and Researchers' (1999) 70 *Oceania* 9
- Tsamenyi, Martin, 'Kiribati' in Michael A Ntuny (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 75

Bibliography

- Tsamenyi, Martin, 'Tuvalu' in Michael A Ntuny (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 342
- Twining, William, *Law in Context: Enlarging a Discipline* (Oxford University Press 1997)
- Urbis for The Law Society of New South Wales, '2011 Law Society National Profile' (Final Report, May 2012) 4
- Vallance, Roger J, 'Is There a Melanesian Research Methodology?' (2007) 7(11) *Contemporary PNG Studies* 1
- Vallance, Roger J, 'Melanesian Research Ethics' (2008) 8(5) *Contemporary PNG Studies* 1
- van Trease, Howard, 'Political Reviews, Melanesia, Vanuatu' (2016) 28(2) *The Contemporary Pacific* 473
- van Trease, Howard, 'Political Reviews, Melanesia, Vanuatu' (2017) 29(2) *The Contemporary Pacific* 361
- Vygotsky, Lev Semyonovich, *Mind in Society: The Development of Higher Psychological Processes* (Harvard University Press, 1980)
- Wadsworth, Barry J, *Piaget's Theory of Cognitive and Affective Development: Foundations of Constructivism* (Longman, 5th ed, 1996)
- Wairiu, Morgan, 'Governance and Livelihood Realities in Solomon Islands' in Stewart Firth (ed), *Globalisation and Governance in the Pacific islands. State, Society and Governance in Melanesia: Studies in State and Society in the Pacific, No. 1*, (ANU Press, 2006) 409
- Waleanisia, Joseph, 'Time' in Hugh Laracy (ed), *Ples Blong lumi: Solomon Islands, the Past Four Thousand Years* (USP Institute of Pacific Studies, 1989) 47
- Webb, Julian et al, *Stakeholders in the Law School* (Bloomsbury, 2010)
- Weisbrot, David, 'Taking Skills Seriously: Reforming Australian Legal Education (2004) 29(6) *Alternative Law Journal* 266
- Weisbrot, David, 'What Lawyers Need to Know, What Lawyers Need to Be Able to Do: An Australian Experience' (2002) 1 *Journal of the Association of Legal Writing Directors* 21
- Wesley, Sharon, *Communication (Threshold Learning Outcome 5)* (Australian Learning and Teaching Council, 2011)
- Witzleb, Norman and Natalie Skead, 'Mapping and Embedding Graduate Attributes across the Curriculum' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis Butterworths, 2011) 31
- Yin, R K, *Case Study Research: Design and Methods* (Sage, 4th ed, 2009)
- Yin, Robert K, 'Introduction' in Robert K Yin (ed), *Introducing the World of Education: A Case Study Reader* (Sage, 2005)
- Yin, Robert K, *Applications of Case Study Research* (Sage, 3rd ed, 2012)
- Zepke, Nick and Linda Leach, 'Improving Student Engagement: Ten Proposals for Action' 2010 11(3) *Active Learning in Higher Education* 167

- Zhao, Chun-Mei and George D Kuh, 'Adding Value: Learning Communities and Student Engagement' (2004) 45(2) *Research in Higher Education* 115
- Zorn, Jean G, 'The Republic of the Marshall Islands' in Michael A Ntuny (ed), *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993) 100
- Zorn, Jean G and Jennifer Corrin Care, 'Barava Tru — Judicial Approaches to the Pleading and Proof of Custom in the South Pacific' (2002) 51(3) *International and Comparative Law Quarterly* 611

2. Media Reports

- Butler, Ben and Ruth Williams, 'You can run, but fewer places to hide tax', *Sydney Morning Herald* (online), 5 January 2012 <<http://www.smh.com.au/business/you-can-run-but-fewer-places-to-hide-tax-20120104-1pl62.html>>
- 'Chief Justice Shares Concerns', *Solomon Times Online*, 22 January 2013 <<http://www.solomontimes.com/news/chief-justice-shares-concerns/7485>>
- Chief magistrate says foreigners not the answer to magistrate shortage in Solomon Islands (21 October 2013) ABC News <<http://www.abc.net.au/news/2013-10-21/an-chief-magistrate-says-foreigners-not-the-answer-to-magistrat/5035402>>
- Fox, Liam, *Vanuatu's Acting President Uses Interim Executive Powers to Pardon Himself and 13 Others Convicted of Bribery* (11 October 2015) ABC News Online <<http://www.abc.net.au/news/2015-10-11/convicted-vanuatu-acting-president-pardons-himself-13-others/6844372>>
- Funding for PaCLII* (20 May 2017) Pacific Islands Legal Information Institute <<http://www.paclii.org/paclii/sponsors/>>
- Garae, Len, 'Sogavare Uses Jailed Vanuatu MPs as Lesson for Opposition', *Vanuatu Daily Post* (online), 20 November 2015 <http://dailypost.vu/news/sogavare-uses-jailed-vanuatu-mps-as-lesson-for-opposition/article_e5ad0c36-d3bb-562a-b3a1-5db83bb472b1.html>
- Joshua, Jane, '30-Year-Old Prosecution Files Finally Archived', *Vanuatu Daily Post* (online), 16 November 2014 <http://dailypost.vu/news/local_news/year-old-prosecution-files-finally-archived/article_b54c78e2-2497-5e14-8527-7a4844de27d3.html>
- Joshua, Jane, 'British-Based Public Prosecutor Appointed', *Vanuatu Daily Post* (online), 3 July 2015 <http://dailypost.vu/news/british-based-public-prosecutor-appointed/article_0184bc79-d2b6-5ca9-b474-a55074128320.htm>
- Joshua, Jane, 'Law Council Appoints Disciplinary Committee', *Vanuatu Daily Post* (online), 21 February 2017 <http://dailypost.vu/news/law-council-appoints-disciplinary-committee/article_d5a9f17d-0360-5939-ac8d-783b5190ba45.html>
- Law Reform Commission has New Chair* (16 November 2014) Solomon Islands Broadcasting Commission <<http://www.sibconline.com.sb/law-reform-commission-has-new-chair/>>

Bibliography

- LexisNexis Wins Vanuatu Supreme Court Tender* (30 June 2015) LexisNexis
<<http://lexisnexis.com.au/media-centre/legal-research-and-innovation/media-release-2015-06-30-lexisnexis-wins-vanuatu-supreme-court-tender.html>>
- 'Magistrates Court Faces Shortage of Judges', *Solomon Times Online*, 17 October 2013
<<http://www.solomontimes.com/news/magistrates-court-faces-shortage-of-judges/7975>>
- Makin, Bob, *Vanuatu Daily News Digest — Leadership Code Ignored* (16 January 2015) Vanuatu Digest <<https://vanuatudigest.com/2015/01/16/vanuatu-daily-news-digest-leadership-code-ignored/>>
- Marango, Thompson, 'New Public Prosecutor to Takeover Office on 16 August', *Vanuatu Daily Post* (online), 5 August 2015 <http://dailypost.vu/new-public-prosecutor-to-takeover-office-on-august/image_a357d0f0-3556-5500-a55c-fddba062f5c6.html>
- Marango, Thompson, 'Bribery Case Timeline', *Vanuatu Daily Post* (online), 2 January 2016
<http://dailypost.vu/news/bribery-case-timeline/article_cf5696a5-3fa8-56a5-a301-323a6ef30621.html>
- Marango, Thompson, 'All Lawyers Involved in Pardon Should be Disciplined: Judge', *Vanuatu Daily Post* (online), 18 August 2016 <http://dailypost.vu/news/all-lawyers-involved-in-pardon-should-be-disciplined-judge/article_b0e3d84c-ceb8-5bc6-b962-ceaa22050115.html>
- Namosuia, Daniel, 'Ashley Joins Forum', *Solomon Star News* (Honiara), 8 October 2012
<<http://www.solomonstarnews.com/news/national/16128-ashley-joins-forum>>
- PacLII, *PacLII Funding Update* (6 November 2017) Facebook
<<https://www.facebook.com/paclii/>>
- 'Panel Appointed to Look into Ashley's Case', *Solomon Star News* (Honiara), 11 May 2012
<<http://www.solomonstarnews.com/news/national/14594-panel-appointed-to-look-into-ashleys-case>>
- Roberts, Anita, 'Vanuatu Students in Fiji Still Waiting for Allowance', *Vanuatu Daily Post* (Port Vila), 13 August 2015 <http://dailypost.vu/news/vanuatu-students-in-fiji-still-waiting-for-allowance/article_504f6db5-dfa2-5fa6-afd2-1445918c71e0.html>
- Roberts, Anita, 'Students in Fiji Still Waiting for Allowances', *Vanuatu Daily Post* (Port Vila), 20 October 2015 <http://dailypost.vu/news/student-in-fiji-still-waiting-for-allowances/article_dfe05725-22a2-5b75-b9fe-d4d926558ba6.html>
- Solomon Islands Bar Association to be Fully Regulated* (19 January 2015) Solomon Islands Broadcasting Corporation <<http://www.sibconline.com.sb/solomon-islands-bar-association-to-be-fully-regulated/>>
- Solomon Islands Prime Minister's Press Secretariat Office, *Law Students Meet PM, Thanks DCCG for Timely Allowance Release* (24 August 2015) Facebook
<<https://www.facebook.com/pmopressecoffice/>>
- 'South Pacific Model Conduct Rules Update' (2011) Issue 11 (December 2014) South Pacific Lawyers Association *newSPLASH* 4
<https://docs.wixstatic.com/ugd/0217f9_5b9347f46f1a4d9d8c865c09fe8b43c3.pdf>

Bibliography

- News @ USP, *Deputy Vice-Chancellor: Learning, Teaching and Student Services* (18 August 2010) The University of the South Pacific
<<http://www.usp.ac.fj/news/story.php?id=630>>
- Tolo, Aina, 'Letter to Editor', *Solomon Star* (online), 15 April 2015
<<http://www.solomonstarnews.com/viewpoint/letters-to-the-editor/6565-lawyers-where-is-the-legal-ethics>>
- The University of the South Pacific, *PDLP Goes Online for Samoa* (20 December 2014) Facebook
<<https://www.facebook.com/USP.Team/photos/a.10150480840797393.363318.76066037392/10152534082512393/?type=1&theater>>
- Vanuatu Attorney-General Criticised for Taking Back His Post* (10 June 2013) Radio NZ
<<http://www.radionz.co.nz/international/pacific-news/212769/vanuatu-attorney-general-criticised-for-taking-back-his-post>>
- 'Vanuatu chiefs to meet over riots', *The Sydney Morning Herald* (online), 6 March 2007
<<http://www.smh.com.au/news/World/Vanuatu-chiefs-to-meet-over-riots/2007/03/06/1173156495493.html>>
- 'Victorian Bar workshop a success in the Solomon Islands' 2011 Issue 3 (October–December) South Pacific Lawyers' Association *newSPLash* 12
<https://docs.wixstatic.com/ugd/0217f9_8b9ed8f97907487ab0535c89320a7286.pdf>
- Vucago, Alisi, 'Vanuatu keeps PacLII online', *Fiji Times* (online), 12 September 2017
<<http://www.fijitimes.com/story.aspx?id=416135>>
- Wilson, Catherine, 'Post-Conflict Trauma Haunts Solomon Islands', *InterPressService News Agency* (online), 29 April 2013 <<http://www.ipsnews.net/2013/04/post-conflict-trauma-haunts-solomon-islands/>>

3. Conference Papers, Internet and Other Sources

- Ackermann, Edith, *Piaget's Constructivism, Papert's Constructionism: What's the Difference?* (2001) Future of Learning Group MIT Media Laboratory, 3
<[http://learning.media.mit.edu/content/publications/EA.Piaget%20 %20Papert.pdf](http://learning.media.mit.edu/content/publications/EA.Piaget%20%20Papert.pdf)>
- About RAMSI*, Regional Assistance Mission to Solomon Islands <<http://www.ramsi.org/about-ramsi/>>
- Adlam, Geoff, 'New Zealand Law Society Snapshot of the Profession' (2015) 859 *LAW Talk* 8
<<http://www.lawsociety.org.nz/practice-resources/research-and-insight/practice-trends-and-statistics/lawyers-by-population-centre,-1-february-2015>>
- Advantage Management Consultancy, 'Continuing Legal Education in Vanuatu' (June 2009)
- Aid at a Glance Charts. Interactive Summary Charts by Aid (ODA) Recipients* (2017) OECD
<https://public.tableau.com/views/OECDACAidataglancebyrecipient_new/Recipients?:embed=y&:display_count=yes&:showTabs=y&:toolbar=no?&:showVizHome=no>
- Aid Partnership with Solomon Islands*, New Zealand Ministry of Foreign Affairs and Trade
<<https://www.mfat.govt.nz/en/aid-and-development/our-work-in-the-pacific/solomon-islands/>>

Bibliography

- Aid Partnership with Vanuatu*, New Zealand Ministry of Foreign Affairs and Trade
<<https://www.mfat.govt.nz/en/aid-and-development/our-work-in-the-pacific/vanuatu/>>
- AusAID, *Stretem Rod Blong Jastis: Vanuatu Law and Justice Partnership Design Document* (Department of Foreign Affairs and Trade, September 2011)
<<https://dfat.gov.au/about-us/publications/Documents/stretem-rod-blong-jastis-design-document.pdf>>
- AusAID, 'Delivery Strategy, Solomon Islands Justice Program (SIJP) July 2013 to June 2017' (2013)
- Australia Awards: Participating Countries*, Australian Government Department of Foreign Affairs and Trade <<http://dfat.gov.au/people-to-people/australia-awards/Pages/participating-countries.aspx#pacific>>
- Australian Bureau of Statistics, *ABS 3235.0 — Population by Age and Sex, Regions of Australia, 2011* (2012)
<<http://www.abs.gov.au/ausstats/abs@.nsf/Products/3235.0~2011~Main+Features~New+South+Wales?OpenDocument>>
- Australian Bureau of Statistics, '2016 Census shows growing Aboriginal and Torres Strait Islander population' (Media Release, 075/2017, 27 June 2017)
<<http://www.abs.gov.au/ausstats/abs@.nsf/MediaReleasesByCatalogue/02D50FAA9987D6B7CA25814800087E03?OpenDocument>>
- Australian Government Department of Foreign Affairs and Trade, *Vanuatu Land Program Program Design Document* (12 February 2009) <<https://dfat.gov.au/about-us/publications/Documents/vanuatu-land-program-design-document.pdf>>
- Australian Government Department of Foreign Affairs and Trade, *Aid Program Performance Report 2013–14, Solomon Islands* (September 2014) <<https://dfat.gov.au/about-us/publications/Documents/solomon-islands-appr-2013-14.pdf>>
- Australian Government Department of Foreign Affairs and Trade, *Stretem Rod blong Jastis mo Sefti* (SRBJS): *Vanuatu–Australia Policing and Justice Program 2017–2020, Program Design Document* (August 2016) <<http://dfat.gov.au/geo/vanuatu/development-assistance/Pages/improving-community-safety-resilience-vanuatu.aspx>>
- Australian Government Department of Foreign Affairs and Trade, 'Aid Program Performance Report Vanuatu' (September 2017) <<http://dfat.gov.au/about-us/publications/Documents/vanuatu-appr-2016-17.pdf>>
- Australian Government Department of Foreign Affairs and Trade, *Solomon Islands Aid Fact Sheet* (October 2017) <<http://dfat.gov.au/about-us/publications/Documents/aid-fact-sheet-solomon-islands.pdf>>
- Australian Government Funding — Development of Legal Profession in the Pacific* (12 October 2011) Pacific Islands Law Officers' Network (PILON)
<<http://www.pilonsec.org/component/content/article/3-pacific-law-and-justice-news/pacific-law-and-justice-news/88-australian-government-funding-development-of-legal-profession-in-the-pacific?Itemid=537>>

Bibliography

Australian Government, Tertiary Education Quality and Standards Agency, *TEQSA and the Australian Qualifications Framework: Questions and Answers* (February 2013)

Australian Institute of Aboriginal and Torres Strait Islander Studies, 'Guidelines for Ethical Research in Australian Indigenous Studies' (2012)

Barker, David, 'University of South Pacific Law School Review' (2005)

Benson, Cliff, *(Pacific) Cognitive/Learning Styles and the Curriculum: Do We Know Enough About our Learners?* (USP, no date)

Building Māori Success (2017) Universities New Zealand

<<http://www.universitiesnz.ac.nz/sector-research-issues-facts-and-stats/building-ma%CC%84ori-and-pasifika-success/building-m%C4%81ori-success>>

Chandra, Rajesh, *Welcome Message from the Vice-Chancellor to Staff for the 2011 Academic Year* (2011) The University of the South Pacific

<<http://www.usp.ac.fj/index.php?id=10036&type=98>>

Chêne, Marie, *Solomon Islands: Overview of Corruption and Anti-Corruption* (Transparency International, 23 January 2017)

<https://www.transparency.org/files/content/corruptionqas/Country_profile_Solomon_Islands_2017.pdf>

Coffey International Development and the Whitelum Group, *Solomon Islands Justice Program Design Document, July 2017 to June 2021* (Australian Government Department of Foreign Affairs and Trade)

Cox, Marcus, Emele Duituturaga and Eric Scheye, *Solomon Islands Case Study, Evaluation of Australian Law and Justice Assistance* (AusAID, December 2012)

<<https://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>>

Development Assistance in Solomon Islands: Overview of Australia's Aid Program to Solomon Islands, Australian Government Department of Foreign Affairs and Trade

<<http://dfat.gov.au/geo/solomon-islands/development-assistance/Pages/development-assistance-in-solomon-islands.aspx>>

Development Assistance in Vanuatu: Overview of Australia's Aid Program to Vanuatu, Australian Government Department of Foreign Affairs and Trade

<<http://dfat.gov.au/geo/vanuatu/development-assistance/pages/development-assistance-in-vanuatu.aspx>>

Forsyth, Miranda, *A Bird that Flies with Two Wings: The Kastom and State Justice Systems in Vanuatu* (PhD Thesis, Australian National University, 2007)

Grimes, R, 'Legal Education in the South Pacific — Producing Tomorrow's Lawyers' (Discussion Paper, USP Pacific Law Department, 1995)

Hayward-Jones, Jenny, 'The High Price of RAMSI: Australia's Lessons from the Solomon Islands', *The Interpreter* (online), 8 May 2014 <<https://www.lowyinstitute.org/the-interpreter/high-price-ramsi-australias-lessons-solomon-islands>>

Indigenous Cultural Competency in Teaching and Learning: Guiding Principles (2011) Universities Australia

Bibliography

- http://www.indigenouisculturalcompetency.edu.au/html/Guiding_P/GP_Teaching.html>
- Indigenous Peoples in Aotearoa (New Zealand)* (2015) International Work Group for Indigenous Affairs <<http://www.iwgia.org/regions/oceaniapacific/aotearoa-new-zealand>>
- Internet users in Oceania* (November 2015) Internet World Stats: Usage and Population Statistics <<http://www.internetworldstats.com/stats6.htm>>
- Jowitt, Anita, 'Report for SOL Board of Studies' (May 2011)
- Kabui, Sir Frank, Governor General of Solomon Islands and Vice-Chancellor of USP, Speech delivered to School of Law Staff, Port Vila, December 2011
- Kelly, Linda, Daniel Woods and Ali Tuhanuku, *The Mid-Term Review of the Solomon Islands Justice Program* (August 2015) <<http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-mid-term-review-2015.pdf>>
- Kift, Sally, 'Curriculum Renewal in Law to Meet the Needs of Global Practice: Embedding and Assessing Skills Acquisition' (Paper presented at Association of American Law Schools Conference on Educating Lawyers for Transnational Challenges, Hawaii, 2004) 1 <<http://www.aals.org/international2004/Papers/KIFT.pdf>>
- Kwan, Kerry, 'Pacific Islands Law Officers' Network 2014' (2014) 12 *New Zealand Yearbook of International Law* 139 <<http://www.austlii.edu.au/nz/journals/NZYbkIntLaw/2014/9.pdf>>
- Law Admissions Consultative Committee (Australia), 'Uniform Admission Requirements' (Discussion Paper and Recommendations, April 1992)
- LeFevre, Tate A, 'Settler Colonialism' (29 May 2015) *Oxford Bibliographies* <<http://www.oxfordbibliographies.com/view/document/obo-9780199766567/obo-9780199766567-0125.xml>>
- Lewis, M Paul, Gary F Simons and Charles D Fennig (eds), *Ethnologue: Languages of the World* (SIL International, 19th ed, 2016). Online version: <<https://www.ethnologue.com/statistics/country>>
- Lynch, John and France Mugler, *English in the South Pacific* (1999) USP Pacific Languages Unit <<http://archive.today/Z9sl6>>
- MacFarlane, Peter, 'Dishonest Practice — Law Students and Plagiarism' (Paper presented at the Pacific Island Law Officers Network Annual Meeting, Apia, Samoa, December 2009)
- Murgatroyd, Peter, *Introduction to Researching South Pacific Law* (updated to July/August 2014) Globalex, Hauser Global Law School Program <www.nyulawglobal.org/globalex/South_Pacific_Law1.html>
- Nand, Nainendra, 'Legislative Drafting, Distance Education, and its Contribution to Good Governance in the Pacific' (Paper presented at the Fifth Pan Commonwealth Forum on Open Learning, London, July 2008)
- New Zealand Ministry of Foreign Affairs and Trade, *New Zealand Aid Programme Strategic Plan 2015–19* (2015) <<https://www.mfat.govt.nz/assets/Aid-Prog-docs/ASEAN/New-Zealand-Aid-Programme-Strategic-Plan-2015-19.pdf>>

Bibliography

New Zealand Scholarships, New Zealand Ministry of Foreign Affairs and Trade
<<https://www.mfat.govt.nz/en/aid-and-development/scholarships/>>

Pacific Law Journal Index, The University of the South Pacific
<www.usp.ac.fj/index.php?id=16432>

PacLII – Who and What Are We? (25 February 2016) Pacific Islands Legal Information Institute
<<http://www.pacii.org/pacii/>>

PacLII, Pacific Legal Gateway, Pacific Islands Legal Information Institute
<www.pacii.org/gateway/>

Palmer, Sir Albert Rocky, 'National Judiciary of Solomon Islands, Opening of the Legal Year 2013, State of the Judicature Report 2013' (21 January 2013)
<<http://www.pacii.org/sb/court-annual-reports/2013-judicature-report.htm>>

Partnership Arrangement between Commonwealth of Australia and the University of the South Pacific 2014–2018 (2014) Australian Government Department of Foreign Affairs and Trade <<http://dfat.gov.au/international-relations/regional-architecture/pacific-islands/Pages/partnership-arrangement-between-commonwealth-of-australia-and-the-university-of-the-south-pacific-2014-2018.aspx>>

Policing and Justice Support Program (Vanuatu) (PJSPV), *Conflict Management and Access to Justice in Rural Vanuatu* (Australian Government Department of Foreign Affairs and Trade, July 2016) 6 <<http://dfat.gov.au/about-us/publications/Documents/conflict-management-access-justice-rural-vanuatu.pdf>>

Powles, C G, 'Law, Decision Making and Legal Services in Pacific Island States' (Papers presented at Development Studies Centre Seminar — The Island States of the Pacific and Indian Oceans: Anatomy of Development, Faculty of Law, Monash University, 1979) 1

Radloff, Alex et al, 'Assessing Graduate Attributes: Engaging Academic Staff and their Students' (Paper presented at ATN Assessment Conference 08: Engaging Students with Assessment, Adelaide, Australia, 20–21 November 2008)
<<http://www.ojs.unisa.edu.au/index.php/atna/article/viewFile/342/279>>

Ricketts, A, 'Online Education in the South Pacific' (Paper presented at the Asia Pacific Initiative Conference, United Nations University, Tokyo, Japan, March 2008)

Sharma, Suruj, 'The Teaching of Law in the South Pacific' (Paper presented at the Australasian Professional Legal Education Conference, Auckland, New Zealand, November 2008)

Simanu-Klutz, Fata, *Language of Instruction: Choices and Consequences* (Pacific Resources for Education and Learning, 1999) 2

Solomon Islands 2012/13 Household Income and Expenditure Survey National Analytical Report (Solomon Islands National Statistics Office, 2015)
<<http://www.statistics.gov.sb/statistics/demographic-statistics/household-income-and-expenditure-surveys>>

Solomon Islands Attorney General's Chambers, 'Solomon Islands Legislation Index, Acts and Subsidiary Legislation, Revised up to 8 November 2017'
<<http://www.pacii.org/sb/indices/legis/legislation-index-08112017.pdf>>

Bibliography

- Tamtam, Helen, 'The Status of English as a Language of Education and Communication in Vanuatu. Language Issues Affecting Students: A Case Study.' (Paper presented at the Fifth Pan-Commonwealth Forum on Open Learning, London, July 2008)
- Transparency International Vanuatu, *National Integrity System Assessment 2014* (2014) 15
<https://www.transparency.org/whatwedo/nisarticle/vanuatu_2014>
- UNESCO, Apia Office for the Pacific States, *Pacific Education for All: 2015 Review* (UNESCO, 2015) <http://uis.unesco.org/sites/default/files/documents/pacific-education-for-all-2015-review-en_1.pdf>
- UNICEF East Asia and Pacific Regional Office, *Solomon Islands Case Study in Education, Conflict and Social Cohesion* (2014)
https://www.unicef.org/eapro/17_PBEA_Solomon_Islands_Case_Study.pdf
- United Nations Committee for Development Policy, Department of Economic and Social Affairs, *List of Least Developed Countries* (United Nations, June 2017)
<https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/ldc_list.pdf>
- United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), *Statistical Year Book for Asia and the Pacific* (2009)
<http://www.unisdr.org/files/13373_ESCAPSYB2009.pdf>
- Universities Australia, *National Best Practice Framework for Indigenous Cultural Competency in Australian Universities* (2011) <<https://www.universitiesaustralia.edu.au/uni-participation-quality/Indigenous-Higher-Education/Indigenous-Cultural-Competency-Framework/Indigenous-Cultural-Competency-Framework#.Wi58rHlx2M8>>
- The University of Papua New Guinea, School of Law, *About the School of Law* (2015)
<<http://www.upng.ac.pg/site/schools/sol.html>>
- The University of the South Pacific, *The Charter of the University* (4 February 1970)
<<http://socialsciences.usp.ac.fj/fileadmin/files/academic/pdo/digitised/CHARTER.pdf>>
- The University of the South Pacific, *About the School of Law* (16 July 2003)
<http://www.vanuatu.usp.ac.fj/about/about_main.html>
- The University of the South Pacific, *Human Resources Policies and Procedures, 5.8.01 Recruitment & Appointment Procedures* (2010)
<<http://www.policies.usp.ac.fj/index.php?docid=3505>>
- The University of the South Pacific, *Annual Plan 2013* (2012)
<<http://www.usp.ac.fj/2013annualplan>>
- The University of the South Pacific, 'Review Panel Report for the School of Law, Faculty of Arts, Law and Education' (August 2012)
- The University of the South Pacific, *Strategic Plan 2013–2018* (2013)
<<https://www.usp.ac.fj/strategicplan2013-2018>>
- The University of the South Pacific, *Curriculum Map for PDLP Program Released* (11 February 2015)

Bibliography

<[https://www.usp.ac.fj/index.php?id=8341&no_cache=1&tx_ttnews\[tt_news\]=2392&cHash=c1f7c98f05cf9ab0ee20209e15b76835](https://www.usp.ac.fj/index.php?id=8341&no_cache=1&tx_ttnews[tt_news]=2392&cHash=c1f7c98f05cf9ab0ee20209e15b76835)>

The University of the South Pacific, *2016 Handbook and Calendar*

<http://www.usp.ac.fj/fileadmin/scripts/HandbookAndCalendar/HandbookAndCalendar_2016_en.pdf>

The University of the South Pacific, *About the University: USP — An Introduction*

<https://www.usp.ac.fj/index.php?id=usp_introduction>

The University of the South Pacific, Centre for Educational Development and Technology, 'University of the South Pacific: Graduate Attributes' (8 February 2006)

The University of the South Pacific, Faculty of Arts and Law, *Overview of the Community Law Information Centre* (17 July 2017) <<https://www.usp.ac.fj/index.php?id=8402>>

The University of the South Pacific, Faculty of Arts and Law, *Message from the Dean of the Faculty* (18 October 2017) <<https://www.usp.ac.fj/index.php?id=17960>>

The University of the South Pacific, School of Law, 'Teaching Plan 2006–2011' (2005)

The University of the South Pacific, School of Law, 'Integrating Discipline Specific Attributes into Assessment' (USP School of Law Teaching and Learning Workshop, 2008)

The University of the South Pacific, School of Law, 'Annual Teaching Plan for 2011' (2010)

The University of the South Pacific, School of Law, LLB Programme outcomes, SOL & USP Policies, Moodle (2015)

Urban Population (% of Total), The World Bank

<<https://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS>>

Vanuatu Education Sector Strategy 2007–2016: Built on Partnership to Achieve Self-Reliance through Education (Australian Government Department of Foreign Affairs and Trade, December 2006)

<https://www.ilo.org/dyn/youthpol/en/equest.fileutils.dochandle?p_uploaded_file_id=381>

Vanuatu Household Income and Expenditure Survey 2010 (Vanuatu National Statistics Office, 2012)

<http://www.vnso.gov.vu/images/PublicDocuments/HouseholdIncome_ExpenditureSurvey_HIES/2010/2010%20HIES_REPORT.pdf>

Vanuatu Kuljoral Senta, *Vanuatu Cultural Research Policy* (Vanuatu Cultural Centre, March 2013) <<http://vanuatuculturalcentre.vu/wp-content/uploads/2013/03/Vanuatu-Research-Policy1.pdf>>

Vanuatu Law Commission, *Annual Report* (2011) Government of Vanuatu

<<https://lawcommission.gov.vu/index.php/zoo/annual-report>>

Vanuatu Law Commission, 'Review of the Dangerous Drugs Act [Cap 12] and the Penal Code [Cap 135]' (Issues Paper No. 01 of 2013, 15 March 2013)

<https://lawcommission.gov.vu/images/pdf/dangerous_drugs_issues_paper.pdf>

Bibliography

- Vanuatu Legal Sector Strengthening Program* (13 January 2015) NSW Department of Justice
<<http://www.justice.nsw.gov.au/legal-services-coordination/Pages/projects/vanuatu-program.aspx>>
- Vanuatu Ministry of Education, *Vanuatu National Language Policy* (2012)
<[https://moet.gov.vu/docs/policies/Vanuatu%20National%20Language%20Policy%20\(English\)_2012.pdf](https://moet.gov.vu/docs/policies/Vanuatu%20National%20Language%20Policy%20(English)_2012.pdf)>
- Vanuatu National Cultural Council, *Vanuatu Cultural Research Policy* (2004) World Intellectual Property Organization
<http://www.wipo.int/export/sites/www/tk/en/databases/creative_heritage/docs/vanuatu_policy.pdf>
- Vanuatu State Law Office, 'Laws of the Republic of Vanuatu — Alphabetical Table of Revised Acts at 16 March 2017. Gaz No 21 of 2017 [Consolidated Index]'
<<http://www.pacii.org/vu/indices/legis/legislationindex16032017.xlsx>>
- The World Bank, *Skills for Solomon Islands: Second Chances* (2012)
<<http://www.worldbank.org/content/dam/Worldbank/document/EAP/Pacific%20Islands/Solomon%20Island%20Skills%20-%20Brief%202.pdf>>
- The World FactBook — Australia-Oceania: Solomon Islands* (27 July 2017) Central Intelligence Agency <<https://www.cia.gov/library/publications/the-world-factbook/geos/bp.html>>
- The World FactBook — Australia-Oceania: Vanuatu* (27 July 2017) Central Intelligence Agency <<https://www.cia.gov/library/publications/the-world-factbook/geos/nh.html>>

4. Primary Legal Materials

- Anti-Corruption Bill 2016* (Solomon Islands)
- Constitution (Sixth) (Amendment) Act 2013* (Vanuatu)
- Constitution of Solomon Islands 1978*
- Constitution of Vanuatu 1980*
- Hamel-Landry v Law Council* [2012] VUSC 119
- Law Society Act 2010* (Vanuatu)
- Legal Practitioners (Professional Conduct) Rules 1995* (Solomon Islands)
- Legal Practitioners Act 1987* (Solomon Islands)
- Legal Profession Act 2005* (Vanuatu)
- Legal Profession Uniform Admission Rules 2015* (NSW)
- Public Prosecutor v Pipite* [2016] VUSC 100
- Regina v Ashley* [2012] SBHC 10
- Rules of Etiquette and Conduct of Legal Practitioners Order 2011* (Vanuatu)
- Statute Law Miscellaneous Provisions Act 2010* (Vanuatu)